United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 3, 2026
Thomas B. Plunkett, III
Clerk

No. 26-10056

TODD MCDONALD,

Petitioner—Appellant,

versus

WARDEN HECKARD,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-1070

Before SMITH, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:[*]

Todd McDonald appeals the denial of a petition for habeas corpus under 28 U.S.C. § 2241. First, McDonald challenges a ruling that he is not entitled to First Step Act (FSA) time credits for the approximately three-month period between the effective date of the FSA and his arrival at his designated BOP facility because he failed to demonstrate that he had earned those time credits by participating in evidence-based recidivism-reduction

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

(EBRR) programming or productive activities (PAs) during that time. While McDonald devotes most of his briefing to textual arguments about the interplay between the statutory text and the Bureau of Prisons (BOP) implementing regulation, he does not address the basis on which the district court ruled. The district court concluded, and McDonald does not dispute in the instant appeal, that he "has not shown that he participated in such programming prior to arriving at his designated facility." Because, as this court recently said, "participation in those activities is a necessary predicate to earning credits under the FSA," McDonald's failure to substantiate any participation in EBRR programming or PAs during the time period in question "is fatal to [his] claim." *Hogan v. Rodriguez*, No. 25-50315, 2026 WL 3032109 at *3 (5th Cir. Oct. 9, 2026).

Second, McDonald appeals the district court's denial of his claim that he is entitled to reinstatement of time credits for the period between September 17, 2020, and December 11, 2020, during which he was placed on "disallow" status due to his declining to participate in an Inmate Financial Responsibility Program (IFRP). The district court pointed out, and McDonald acknowledged in his pleadings before the district court, that reinstatement of time credits may be allowed on a case-by-case basis, within the discretion of the BOP. The text of the BOP policy statement regarding decisions to reinstate lost FSA credits confirms the discretionary nature of the decision. It states that "[a]n inmate who has lost FSA Time Credits . . . *may* have part or all of the FSA Time Credits restored to him or her, on a case-by-case basis, after clear conduct . . . for two consecutive risk and needs assessments conducted by the [BOP]." 28 C.F.R. § 523.43(c) (emphasis added). Accordingly, although McDonald maintains that he has "been clear" since 2019, he is not entitled to the restoration of these credits because that decision is in the BOP's discretion. Further, he has not alleged that the refusal to reinstate these credits was an abuse of that discretion. *See*

Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455 (1985) ("We hold that the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits."). Nor could he make such a showing here, where there is record evidence that the FSA time credits were refused because McDonald did not abide by the conditions of the IFRP.

Finally, McDonald appeals the district court's ruling that his request for immediate release to home confinement is not cognizable under § 2241. The district court reasoned that prerelease placement in home confinement is a change in conditions of confinement, not a release from custody. The district court held that under this court's precedent, such a request is not cognizable under § 2241, and accordingly denied the request. *Melot v. Bergami*, 970 F.3d 596, 599 (5th Cir. 2020) (holding that a request for release to home confinement under an FSA pilot program was a request for a change in conditions of confinement, not for release of custody, and was not cognizable under § 2241). The district court further noted that the placement of an inmate lies within the discretion of the BOP. *See United States v. Sneed*, 63 F.3d 381, 388 n.6 (5th Cir. 1995). Both reasons are sufficient grounds to affirm the district court's denial of this request. Yet even if that were not so, McDonald has abandoned this claim by failing to adequately brief the issue, even with the benefit of liberal construction afforded to pro se litigants. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). In the instant appeal, McDonald does not offer any argument as to how the district court's conclusion that his claim was not cognizable under § 2241 is incorrect but merely reasserts his request for home confinement. When an appellant fails to identify any error in the district court's analysis, it is the same as if the appellant had not appealed that issue. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

The judgment of the district court is affirmed.

JAMES E. GRAVES, JR., *Circuit Judge*, dissenting in part.

I disagree with the majority's conclusion regarding "McDonald's failure to substantiate any participation" in programs that the Bureau of Prisons (BOP) has failed to even suggest that it offered. In its brief, the BOP parrots many of the erroneous and unsupported assertions it made in *Hogan v. Rodriguez*, No. 25-50315, 2026 WL 3032109 (5th Cir. Oct. 9, 2026). Overlooking any shortcomings, the majority now simply reaffirms based on *Hogan*—a case in which I dissented. Thus, I respectfully dissent in part and reaffirm herein all relevant portions of my previous dissent. *Id.* at *5.