

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-1603

BARRY WYLLIE, Appellant

v.

WARDEN K. HOGSTEN

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 06-cv-00291)
District Judge: Honorable William W. Caldwell

Submitted For Possible Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
June 28, 2007

Before: BARRY, AMBRO and FISHER, Circuit Judges.

(Filed: July 18, 2007)

OPINION

PER CURIAM

Barry Wyllie appeals from the District Court's order denying his habeas petition filed pursuant to 28 U.S.C. § 2241. In his habeas petition, Wyllie challenges the calculation of his good conduct time ("GCT") by the Bureau of Prisons ("BOP").

Because we conclude that Wyllie's appeal presents no substantial question, we will summarily affirm the District Court's order.

In January 1998, Wyllie was sentenced in the United States District Court for the Eastern District of New York to 100 months imprisonment to be followed by a three-year term of supervised release for affecting commerce by robbery in violation of 18 U.S.C. § 1951(a). He was also sentenced to a consecutive sixty-month term of imprisonment for violating 18 U.S.C. § 924(c)(1). The BOP projects Wyllie's release date will be in April 2008. The calculation of Wyllie's GCT is based on the time Wyllie will actually serve in prison, not on the entire 160-month sentence. Wyllie disagrees with the BOP's calculation and states that he should be released on December 27, 2007.

After administratively challenging the BOP's calculation, Wyllie filed this § 2241 petition. In the habeas petition, Wyllie argues that the BOP's calculation of his GCT deprives him his entitled GCT.¹ The Magistrate Judge recommended denying the habeas petition. Ultimately, the District Court adopted the Magistrate Judge's report and recommendation. Wyllie timely filed a notice of appeal.

We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(a). We exercise plenary review over the District Court's legal conclusions and apply a clearly erroneous standard to its findings of fact. See Ruggiano v. Reish, 307 F.3d 121, 126 (3d Cir. 2002).

¹In the petition, Wyllie asserts eight claims. However, all of Wyllie's claims relate to the BOP's calculation of his GCT.

We resolved the issue raised in Wyllie's appeal in O'Donald v. Johns, 402 F.3d 172 (3d Cir. 2005)(per curiam), cert. denied, 126 S. Ct. 1906 (2006). In O'Donald, we stated that the meaning of 18 U.S.C. § 3624(b) is ambiguous. Thus, we deferred to the BOP's reasonable interpretation of the statute. See O'Donald, 402 F.3d at 174. Wyllie's appeal is controlled by our decision in O'Donald and presents us with no substantial question. Therefore, we will grant the Appellee's motion and summarily affirm the District Court's order.