

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-3107

CRAIG R. ESPIGH,
Appellant
v.

UNITED STATES OF AMERICA, CAMERON LINDSAY,
Warden, USP Canaan

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 06-cv-02436)
District Judge: Honorable Yvette Kane

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 12, 2007

Before: SLOVITER, FISHER AND HARDIMAN, CIRCUIT JUDGES.

(Opinion filed: October 24, 2007)

OPINION

PER CURIAM

Craig R. Espigh appeals the order from the United States District Court for the Middle District of Pennsylvania denying his petition for a writ of habeas corpus filed

pursuant to 28 U.S.C. § 2241.¹ In the petition, Espigh challenged the method that the Bureau of Prisons (“BOP”) uses to calculate Good Conduct Time (“GCT”). The BOP calculates GCT based upon the amount of time an inmate actually serves, not the amount of time to which the prisoner has been sentenced. Espigh maintains that this method is contrary to what Congress intended when it enacted 18 U.S.C. § 3624(b).

We will summarily affirm the District Court’s order denying Espigh’s petition. See Third Circuit LAR 27.4 and I.O.P. 10.6. Summary action is appropriate where there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. In this appeal, there is no substantial question presented. The District Court was correct that our Court has squarely rejected Espigh’s argument before. See O’Donald v. Johns, 402 F.3d 172, 174 (3d Cir. 2005). In O’Donald, the petitioner argued that he was entitled to earn up to 54 days of GCT per year of the term of sentence imposed, rather than just on the amount of time actually served. We held that the BOP’s interpretation of the statute, whereby it permits GCT to be earned only on time actually served, is reasonable. See id.

¹ The District Court’s order also denied Espigh’s motion to amend his § 2241 petition to include an allegation that his sentence was unconstitutional pursuant to United States v. Booker, 543 U.S. 220 (2005). A federal prisoner’s challenge to the legality of his sentence and conviction must be raised in a § 2255 motion, except where the remedy under § 2255 would be inadequate or ineffective. See 28 U.S.C. § 2255; Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002). Espigh has not shown that § 2255 is inadequate or ineffective to consider the Booker claim raised in his motion to amend. We also note that the rule announced in Booker does not apply retroactively to cases on collateral review. See Lloyd v. United States, 407 F.3d 608, 615-16 (3d Cir. 2005). Thus, the District Court did not abuse its discretion in denying the motion to amend. See Lake v. Arnold, 232 F.3d 360, 373 (3d Cir. 2000).

at 174. Accordingly, we find that there is no substantial question presented in this appeal.

We will affirm the District Court's order.