

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

December 6, 2011

Elisabeth A. Shumaker
Clerk of Court

MANUEL DE LA FUENTE,

Petitioner - Appellant,

v.

JULIE WANDS, Warden,

Respondent - Appellee.

No. 11-1415
(D. Colo.)
(D.C. No. 1:11-CV-01646-LTB)

ORDER AND JUDGMENT*

Before **O'BRIEN, McKAY, and TYMKOVICH**, Circuit Judges.

Manuel De La Fuente is a federal prisoner incarcerated in Florence, Colorado. In this 28 U.S.C. § 2241 petition, he contends the Bureau of Prisons (BOP) impermissibly denied what he claims to be his right to a sentence reduction under 18 U.S.C. § 3621(e)(2)(B). That statute permits, but does not require, the BOP to reduce the term of imprisonment of a prisoner convicted of a nonviolent offense if the prisoner successfully

* Oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). We have decided this case on the briefs.

This order and judgment is an unpublished decision, not binding precedent. 10th Cir. R. 32.1(A). Citation to unpublished decisions is not prohibited. Fed. R. App. 32.1. It is appropriate as it relates to law of the case, issue preclusion and claim preclusion. Unpublished decisions may also be cited for their persuasive value. 10th Cir. R. 32.1(A). Citation to an order and judgment must be accompanied by an appropriate parenthetical notation – (unpublished). *Id.*

completes a treatment program. De La Fuente completed a treatment program in June 2011, but the BOP determined he was not eligible for a sentence reduction because the facts underlying an earlier state escape conviction presented a risk of violence. *See* 28 C.F.R. § 550.55(b) (inmates with felony convictions for offenses presenting potential risk of violence will not be eligible for early release). In spite of the BOP regulations and related policy statements, De La Fuente claims he is eligible for early release because he escaped from a state, not federal, facility.

In a cogent and thorough order the district court addressed De La Fuente's complaints and arguments. It then dismissed the petition prior to service on the defendant. *See* 28 U.S.C. § 1915(e)(2).

For substantially the same reasons provided by the district court, we **AFFIRM**.

De La Fuente filed a motion to proceed without prepayment of costs or fees. The motion is **DENIED**. He must pay the filing and docket fees in full to clerk of the district court. *See Kinnell v. Graves*, 265 F.3d 1125, 1129 (10th Cir. 2001).

Entered by the Court:

Terrence L. O'Brien
United States Circuit Judge