

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-8082

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

OTONIEL ALVAREZ MERCADO, a/k/a Otoniel
Alvarez,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Richard L. Voorhees,
District Judge. (CR-97-297-V)

Submitted: June 11, 2002

Decided: June 21, 2002

Before NIEMEYER and KING, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Otoniel Alvarez Mercado, Appellant Pro Se. Robert James Conrad,
Jr., United States Attorney, Charlotte, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

In February 1999, while already serving a related state sentence, Otoniel Alvarez Mercado was sentenced in federal court to eighty-four months imprisonment after he pled guilty to conspiracy to possess with intent to distribute and to distribute cocaine and marijuana. On September 21, 2001, Mercado filed a "Nunc Pro Tunc" motion seeking jail credit on his federal sentence for the time spent in state custody on the related conviction. The district court denied the motion on the merits, and Mercado appealed.

We view Mercado's motion as a request for habeas relief under 28 U.S.C. § 2241 (1994) filed in the wrong district court (Mercado is incarcerated in Jesup, Georgia) and without exhausting the Bureau of Prisons' administrative remedies. We therefore affirm the district court's dismissal of Mercado's motion, but we modify the district court's order to reflect a dismissal without prejudice for failure to exhaust administrative remedies, rather than a dismissal based on the merits. We expressly decline to address the merit or lack thereof of Mercado's motion, so that Mercado remains free to file a § 2241 petition in the proper court after exhausting his administrative remedies.

We dispense with oral argument, because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED