

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 10-10088  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 21, 2010 JOHN LEY CLERK
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D.C. Docket No. 1:08-cv-21426-JAL

WILFRED HART,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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(June 21, 2010)

Before BIRCH, CARNES and FAY, Circuit Judges.

PER CURIAM:

Wilfred Hart, a federal parolee, appeals through counsel, the district court's

denial of his 28 U.S.C. § 2241 habeas corpus petition.

In 1988, Hart was convicted of two counts of conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and eleven counts of possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Hart to 15 years imprisonment on each of those counts, with the sentences on the conspiracy counts to run consecutively and the sentences on the possession counts to run concurrently to one another and to the sentences on the conspiracy counts. Hart was also sentenced to a 10-year special parole term on each of the possession counts, with those terms to be served concurrently to one another. All told, Hart received a total sentence of 30 years imprisonment plus 10 years of special parole.

In his initial brief, Hart argued that the United States Parole Commission violated Bifulco v. United States, 447 U.S. 381, 100 S.Ct. 2247 (1980), by beginning his 10-year special parole term after the regular parole term on his conspiracy convictions had terminated. In Bifulco, the Supreme Court held that a sentencing court could not impose a special parole term for conspiracy drug convictions under 21 U.S.C. § 846. Id. at 400, 100 S.Ct. at 2259. Hart concedes in his reply brief that his special parole term began at the appropriate time and asserts for the first time that paperwork issued by the Parole Commission improperly

suggests that his special parole term attached to his conspiracy convictions instead of his possession convictions.<sup>1</sup> He asks us to order that his special parole term only be applied to his possession convictions and to instruct the Commission to issue a corrected sentence computation. Because Hart raised that argument for the first time in his reply brief, we treat it as waived. United States v. Evans, 473 F.3d 1115, 1120 (11th Cir. 2006) (arguments first raised in reply brief are deemed not properly preserved). In any event, we find his argument to be meritless and affirm the district court's denial of his habeas petition.

**AFFIRMED.**

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<sup>1</sup>His reply brief states: "Mr Hart has conceded that his ten year term of special parole began after he completed his term of regular parole on his thirty (30) year sentence. . . . While, technically, Mr. Hart's sentence may appear to be calculated correctly by the Bureau of Prisons, it is imperative that the Commission's paperwork be made clear in order to determine that Mr. Hart's sentence is in accordance with the law."