

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

January 31, 2006

Elisabeth A. Shumaker
Clerk of Court

ROBERT C. GARNETT, SR.,

Petitioner-Appellant,

v.

GARY GOLDER, Warden,

Respondent-Appellee.

No. 05-1248
(District of Colorado)
(D.C. No. 05-Z-422)

ORDER

Before **BRISCOE**, **LUCERO** and **MURPHY**, Circuit Judges.

Appellant, Robert C. Garnett, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on May 24, 2005, challenging the calculation of his statutory discharge date. The district court concluded Garnett had failed to exhaust his state remedies and dismissed the application. Garnett now seeks a certificate of appealability (“COA”) to enable him to appeal the district court’s dismissal of his § 2241 application. *See* 28 U.S.C. § 2253(c)(2). Garnett’s motion to proceed *in forma pauperis* on appeal is **granted**.

The brief Garnett filed with this court indicates he is no longer incarcerated. Accordingly, Garnett was ordered to show cause as to why his

application for a COA should not be dismissed as moot. *See Spencer v. Kemna* ,
523 U.S. 1, 7 (1998). After reviewing the entire record on appeal, including
Garnett's response to the order to show cause, this court concludes that the
application for COA is moot. Accordingly, we **dismiss** Garnett's appeal.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

By
Deputy Clerk