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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PATRICK J. O'MALLEY,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>CHARLES DANIELS, Federal Prison Camp FCI Sheridan, Sheridan OR,</p> <p>Respondent - Appellee.</p>

No. 07-35457

D.C. No. CV-06-01538-MRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Federal prisoner Patrick J. O'Malley appeals pro se from the district court's judgment denying his petition for writ of habeas corpus under 28 U.S.C. § 2241.

We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

O'Malley contends that the district court erred by determining that the Bureau of Prisons properly found him ineligible for a early release under 18 U.S.C. § 3621(e)(2)(B). We conclude that the district court did not err. *See Lopez v. Davis*, 531 U.S. 230, 233 (2001).

O'Malley's contention that *Lopez* has been overruled by *United States v. Booker*, 543 U.S. 220 (2005), is without merit.

AFFIRMED.