

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20058
Conference Calendar

IVO NABELEK,

Petitioner-Appellant,

versus

DENISE COLLINS, Judge,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-4083

August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Ivo Nabelek ("Nabelek"), Texas state prisoner #669748, appeals the district court's dismissal of his writ of mandamus petition for lack of jurisdiction. Because his claims are not cognizable for habeas review, Nabelek's request for a certificate of appealability (COA) is DENIED AS UNNECESSARY.

Nabelek argues that under 28 U.S.C. § 1651, the district court has jurisdiction to order a Texas state court judge to rule

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

on his pending motions. Federal courts are empowered to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." See 28 U.S.C. § 1651(a). The relief requested by Nabelek would not be in aid of the jurisdiction of a federal court.

The district court did not err in dismissing Nabelek's mandamus petition because the court lacked authority to issue a writ of mandamus directing the state court to rule on Nabelek's pending motions. See Moyer v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973).

Nabelek's appeal presents no issue of arguable merit and is, therefore, dismissed as frivolous. See 5TH CIR. R. 42.2.

DENY COA AS UNNECESSARY; APPEAL DISMISSED AS FRIVOLOUS.