

October 2, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-20467  
Summary Calendar

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JOHN GRAY,

Petitioner-Appellant,

versus

DOUGLAS DRETKE, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-02-CV-4338  
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Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

John Gray, Texas prisoner # 475245, appeals the district court's refusal to order that the filing fee for Gray's appeal in his 28 U.S.C. § 2254 petition (no. 03-20147) be paid with funds in prison release account. The Prisoner Litigation Reform Act does not apply to 28 U.S.C. § 2254 cases. Carson v. Johnson, 112 F.3d 818, 820 (5th Cir. 1997). Once the district court determined that Gray could proceed in forma pauperis on appeal,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

there was no need to assess a partial filing fee or payment schedule for the appellate filing fees. FED. R. APP. P. 24(a). Gray may proceed in his 2254 action without paying a filing fee. Furthermore, Gray fails to show that there is any money in his release account or that funds therein can be used to pay appellate filing fees. See TEX. GOV'T CODE ANN. § 501.015(b). Gray's instant appeal is without arguable merit and dismissed. See 5TH CIR. 42.2. His motion for relief from the district court order denying payment from his prison funds is denied.

APPEAL DISMISSED. MOTION DENIED.