

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50928
Summary Calendar

RANDY LORINE CARROLL,

Plaintiff-Appellant,

versus

VICTOR RODRIGUEZ; TEXAS BOARD OF PARDONS &
PAROLES; JUDITH D. MILLER,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-95-CV-106
- - - - -

May 21, 1996

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

Randy Lorine Carroll appeals the district court's dismissal of his habeas corpus claims for failure to exhaust state remedies and the court's dismissal as frivolous of his civil rights claims. Carroll's petition is more properly construed as a petition pursuant to 28 U.S.C. § 2241 rather than 28 U.S.C. § 2254. See United States v. Tubwell, 37 F.3d 175, 177 (5th Cir. 1994). The district court did not abuse its discretion by dismissing the § 2241 petition for failure to exhaust. See

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). Further, the district court did not abuse its discretion by dismissing Carroll's civil rights claim as frivolous under 28 U.S.C. § 1915(d). See Heck v. Humphrey, 114 S. Ct. 2364 (1994).

The judgment of the district court is AFFIRMED. Carroll's motion to stay the appeal pending his exhaustion of state remedies is DENIED.

AFFIRMED.