

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10415
Conference Calendar

HENRY RAY SIMPSON,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CV-1755-A

August 21, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:*

Henry Ray Simpson, Texas prisoner #899703, seeks a certificate of appealability (COA) to appeal from the dismissal of what the district court construed as his habeas corpus application for failure to comply with a court order. Simpson was serving concurrent federal and state sentences, and he sought to challenge his transfer from the federal prison system to the Texas prison system. He specifically stated that he is not seeking habeas corpus relief. Because Simpson did not attempt to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

challenge the validity of his underlying convictions or sentences, his action was not a habeas action, and no COA is necessary for an appeal. See *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Simpson's COA motion therefore is DENIED as unnecessary.

The district court erred by dismissing Simpson's action for failure to comply with the deficiency order, see *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988); Simpson responded timely to the order by correctly noting that his was not a habeas action. The district court's error is harmless, however. Simpson has no constitutional right to incarceration in any particular prison system. *Olim v. Wakinekona*, 461 U.S. 238, 245, 247-48 (1983). Where Simpson served his concurrent sentences was a matter for the two sovereigns involved to decide. See *United States v. McCrary*, 220 F.3d 868, 870-71 (8th Cir. 2000). Simpson does not identify any federal statute that gives him the right to maintain a civil action and obtain the relief sought. The judgment of the district court is affirmed on the basis of lack of subject-matter jurisdiction.

COA DENIED AS UNNECESSARY; JUDGMENT AFFIRMED.