

April 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11001
Summary Calendar

GARY WAYNE BARNES,

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. 3:01-CV-823

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Gary Wayne Barnes, Texas prisoner # 318814, was convicted by a jury of two counts of aggravated rape and one count of burglary of a habitation and was sentenced to life imprisonment. He appeals the district court's denial of his 28 U.S.C. § 2254 application in which he alleged that, although he has a life sentence, he has a liberty interest in release to mandatory supervision. Barnes argues that Texas created a liberty interest

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

through its mandatory supervision laws and that he is being deprived of that right in violation of due process and equal protection. He argues that TEX. CODE CRIM. P. ART. 42.12, § 15(c) only excludes prisoners sentenced to death from release on mandatory supervision. Barnes' arguments are foreclosed by this court's decision in Arnold v. Cockrell, 306 F.3d 277, 279 (5th Cir. 2002).

AFFIRMED.