

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-20593  
Summary Calendar

---

W. FOSTER SELLERS,

Plaintiff-Appellant,

versus

M.B. THALER, in his official capacity as chairman of the state classification committee, Texas Department of Criminal Justice Institutional Division; TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD OF PARDONS & PAROLE,

Defendants-Appellees.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CV-725  
-----

September 16, 2002

Before HIGGINBOTHAM, SMITH and CLEMENT, Circuit Judges.

PER CURIAM:\*

W. Foster Sellers, Texas inmate # 599791, appeals from the dismissal as frivolous of his 42 U.S.C. § 1983 complaint against defendants M. B. Thaler, Chairman of the State Classification Committee, and the Texas Board of Pardons and Paroles ("the Board"). Sellers claimed that the defendants violated his constitutional rights by executing the wrong sentencing order and

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

considering invalid convictions in determining the date that he would be eligible for consideration for release on parole.

"In Texas, it is entirely speculative whether an inmate will actually obtain parole, inasmuch as there is no right to be released on parole." Madison v. Parker, 104 F.3d 765, 768 (5th Cir. 1997). "Because it is entirely speculative whether a prisoner will be released on parole, the court has determined that there is no constitutional expectancy of parole in Texas." Malchi v. Thaler, 211 F.3d 953, 957 (5th Cir. 2000)(internal quotation and citation omitted). We have likewise determined that "any delay in [a Texas prisoner's] consideration for parole cannot support a constitutional claim." Id.

As Sellers' constitutional claim lacked an arguable basis in law, the district court did abuse its discretion in dismissing his complaint. Accordingly, the judgment of the district court is AFFIRMED.