

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40909
Summary Calendar

GEORGE ALLEN DAY,

Petitioner-Appellant,

versus

ERNEST CHANDLER, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-315

January 6, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

George Allen Day, federal prisoner # 19407-077, appeals the district court's denial of his 28 U.S.C. § 2241 petition, in which he argued that an illegal 1989 conviction for issuing false cashier's checks resulted in an improper denial of parole, as repetitious. Day is correct that the petition in this case challenges a different 1989 conviction than the one he attacks in Cause No. 1:02-CV-266. However, Day is not entitled to relief. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

the extent that Day is challenging the 1989 cashier's check conviction rather than the denial of parole, he is not "in custody" for the purposes of obtaining habeas relief.¹ To the extent that Day's argument can be construed as a challenge to the parole proceedings, the complaint in Cause No. 1:02-CV-266 constituted a previous challenge to those proceedings; at the time it was filed Day was aware of his claims regarding the 1989 cashiers' check conviction, and the current application would in fact be successive.²

AFFIRMED.

¹ *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989).

² *Felker v. Turpin*, 518 U.S. 651, 662-63 (1996); *In re Cain*, 137 F.3d 234, 235-36 (5th Cir. 1998).