

October 21, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60364
Conference Calendar

HERBERT L. BREWER, III,

Plaintiff-Appellant,

versus

STATE OF MISSISSIPPI,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:02-CV-314-B-D

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

Herbert L. Brewer, III, appeals the dismissal of his 42 U.S.C. § 1983 complaint, which the district court construed as a successive 28 U.S.C. § 2254 petition. The district court did not err in construing Brewer's complaint as a 28 U.S.C. § 2254 petition as Brewer's claims clearly challenged his possession-of-explosives conviction. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

However, as Brewer was no longer in custody at the time that he filed his petition, the district court lacked jurisdiction to consider the petition, and the denial of the petition is affirmed on that basis. See Maleng v. Cook, 490 U.S. 488, 492 (1989); United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

Brewer argues that he was entitled to the district court's "chamber papers" and that the court failed to give adequate consideration to his claims. A review of the magistrate judge's report reflects a conscientious consideration of Brewer's claims, and his assertion that the district court failed to give adequate attention to his claims is simply unsupported. The judgment of the district court is AFFIRMED.