

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60798
Conference Calendar

CHRIS CARBIN,

Plaintiff-Appellant,

versus

STATE OF MISSISSIPPI; MIKE MOORE;
GEORGE CARLSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:03-CV-916-WS

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Christopher "Chris" Carbin, Mississippi prisoner # 44718, appeals the district court's *sua sponte* dismissal of his petition for a writ of mandamus seeking to compel a Mississippi state court clerk to docket a writ of error that he submitted on April 29, 2003, and to issue summons. The district court held that it lacked jurisdiction to compel the state court clerk to docket the submission. Carbin contends that the district court should have

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

allowed him to amend his petition to request relief under the All Writs Act, 28 U.S.C. § 1651(a). He also asserts that the refusal to docket the motion is a denial of his due process rights.

Although conceding that the state court subsequently ruled on the motion that he seeks to have docketed, Carbin asserts that the state court was without jurisdiction to enter judgment given the pendency of this federal appeal. This argument is without merit. In light of the state court's dismissal of the writ of error, Carbin's request to compel the state court clerk to docket the writ is moot, and his appeal is DISMISSED. See Bailey v. Southerland, 821 F.2d 277, 278 (5th Cir. 1987).