

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2020

Lyle W. Cayce
Clerk

No. 20-20298

RONALD THOMAS DRAKOS, II,

Petitioner—Appellant,

versus

ED GONZALEZ, HARRIS COUNTY SHERIFF DEPARTMENT,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-1505

Before CLEMENT, ELROD, and HAYNES, *Circuit Judges.*

PER CURIAM:*

Ronald Thomas Drakos, II, a state pre-trial detainee, has moved for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2241 petition. The district court determined that Drakos's Fifth Amendment challenge to his detention based on COVID-19 concerns was tantamount to a challenge to the conditions of his confinement, not the fact

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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or duration thereof. Therefore, the court held that 42 U.S.C. § 1983 was the proper vehicle for Drakos's challenge.

To obtain a COA, Drakos "must make a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (internal quotation marks and citation omitted). During the pendency of his COA motion, Drakos was released on a surety bond, thereby rendering the controversy moot. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006); *McCorvey v. Hill*, 385 F.3d 846, 848-49 (5th Cir. 2004). Therefore, IT IS ORDERED that this appeal is DISMISSED as moot. The motion for a COA is DENIED as moot.