UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2666
Summary Calendar

FRANK ROGER MILLARD,

Appellant,

VERSUS

JOHN CRUZOT, ET AL.,

Respondent.

Appeal from the United States District Court
for the Southern District of Texas
CA H 92 1319

June 11, 1993

Before KING, DAVIS and DEMOSS, Circuit Judges.

PER CURIAM:[1]

Millard challenges the dismissal of his § 1983 suit. We affirm.

I.

Frank Roger Millard is in the custody of the Texas Department of Criminal Justice serving the remainder of a 35-year sentence following parole revocation. He had been on parole for five years

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

prior to its revocation. He has filed two petitions pursuant to 42 U.S.C. § 1983.

The initial petition was filed in the Southern District of Texas against state court Judge Cruzot as well as the Texas Department of Pardons and Parole and James Collins, Director of Texas Department of Criminal Justice, Institutional Division. Millard later filed another § 1983 lawsuit solely against Judge Cruzot.

In this petition, Millard alleged that his constitutional rights were violated in two respects: (1) he was required to forfeit all previously accrued good time earned while in prison before parole, and (2) the time served on parole has not been credited as actual time served against his sentence.

The district court first noted that Millard's contention was potentially cognizable in a habeas proceeding. It nevertheless addressed the merits of the claim and determined that Millard had no realistic chance of ultimate success nor any arguable basis in law or fact because he did not assert a constitutional deprivation. The district court entered final judgment and dismissed the action. Millard then filed a notice of appeal and a motion to amend or alter the judgement simultaneously. After the district court denied his motion to amend or alter the judgment, Millard filed another timely notice of appeal.

II.

This court usually bars consideration of § 1983 claims that directly or indirectly challenge the constitutionality of a state

conviction or sentencing decision prior to exhaustion of habeas remedies. **Serio v. Members of La. State Bd. of Pardons**, 821 F.2d 1112, 1117 (5th Cir. 1987). This exhaustion requirement "is based on the comity-inspired principle that state courts should be given first opportunity to rule on the merits of a prisoner's claim attacking the constitutionality of the fact or duration of his incarceration." **Id**. at 1114 (citation omitted).

Millard's contentions ordinarily should be pursued through habeas corpus. However, neither habeas nor § 1983 relief is available to a plaintiff who fails to allege a deprivation of a federal constitutional or statutory right. 28 U.S.C. § 2254(a); **Thomas v. Torres**, 717 F.2d 248, 248-49 (5th Cir. 1983), **cert. denied**, 465 U.S. 1010 (1984). Millard has not sufficiently alleged such a deprivation.

An inmate's liberty interest in parole or good time depends on the language of the applicable state statute. **See Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex**, 442 U.S. 1, 8-9, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). A Texas inmate does not have a right to receive credit against his sentence for time spent on parole. **See Betts v. Beto**, 424 F.2d 1299, 1300 (5th Cir. 1970). Thus, Millard's claim that he is entitled to a credit for the five years he spent on parole prior to its revocation does not allege a claim which could merit habeas or § 1983 relief.

Additionally, a state statute creates a protected liberty interest for a prisoner when it uses mandatory language specifically to limit official discretion, thus requiring a

particular outcome when relevant criteria are met. **Kentucky Dep't of Corrections v. Thompson**, 490 U.S. 454, 462-63, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); **Olim v. Wakinekona**, 461 U.S. 238, 249, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). The Texas parole statute contains discretionary and permissive language that creates no protected liberty interest in parole or the expectancy of release. **Creel v. Keene**, 928 F.2d 707, 712 (5th Cir.), **cert. denied**, 111 S.Ct. 2809 (1991).

Similarly, Texas's good-time statute does not create a protected interest in good time that survives revocation of parole. Tex. Gov't. Code Ann. § 498.003 (West Supp. 1993), provides for accrual of good time, and § 498.004(b) provides for its forfeiture under certain conditions, including revocation of parole. In fact, § 498.004(b) provides that forfeiture is automatic upon revocation of parole, although an inmate may accrue new good time for subsequent prison time served, or may get back forfeited good time under certain circumstances. Tex. Rev. Civ. Stat. Ann. art. 6184*l* (West 1974), the statute in effect at the time of Millard's offense, also provided for the forfeiture of good time. Thus, Millard's claim that he is entitled to a credit for good time that he accrued while incarcerated prior to his parole does not allege a constitutional deprivation sufficient to obtain relief through habeas corpus or § 1983.

AFFIRMED.