

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-3985  
Conference Calendar

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HARRY ROBERTS,

Petitioner-Appellant,

versus

RICHARD P. IEYOUB, ATTORNEY  
GENERAL, State of Louisiana and  
JOHN P. WHITLEY, Warden, Louisiana  
State Penitentiary,

Respondents-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 92-CV-2224 (E) 4  
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June 22, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Roberts was convicted of first degree murder and sentenced to death in August 1974, under La. Rev. Stat. Ann. 14:30 (West 1973). The imposition of the death penalty was annulled and Roberts was sentenced under La. Rev. Stat. Ann. 14:30.1 (West 1973) to life imprisonment, without eligibility for parole, probation or suspension of sentence for a period of twenty years. State v. Roberts, 350 So.2d 130 (La. 1977).

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Also in effect at the time that Roberts was convicted and sentenced was La. Rev. Stat. Ann. 15:574.4 (West 1974). Subsection B of that section provided, in pertinent part, that "[n]o prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years."

Roberts will not have served twenty years of his sentence prior to 1994. He has not been denied parole by the Parole Board because, even under his own arguments, he is not presently eligible to apply for parole and he has not obtained a commuted sentence from the Governor to a fixed term of years.

Roberts has failed to present an actual, justiciable case or controversy to this Court. See U.S. Const. Art. III, § 2, cl. 1. The alleged dispute between the Parole Board and Roberts "has not ripened into the definite and concrete controversy" necessary for the adjudication of the claim. Cross v. Lucius, 713 F.2d 153, 159 (5th Cir. 1983). As of now, the controversy is hypothetical and, as such, does not present this Court with the Article III case or controversy requisite to its jurisdiction.

The dismissal by the district court was a dismissal of the petition on the merits. Because Roberts prematurely filed the action in the federal system, the dismissal should have been based on a lack of jurisdiction. There is no basis for federal jurisdiction in this case and, therefore, the appeal is DISMISSED for lack of federal jurisdiction.