

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4971
Conference Calendar

EZRA DAVIS,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. CA-91-2385

- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Ezra Davis argues that LA. REV. STAT. ANN. 15:574.4 subsections (A) & (B) conflict with LA. REV. STAT. ANN. 14:30.1, and result in his sentence being too equivocal for prison officials to apply. Davis does not assert that he is presently eligible for parole or that he has been denied parole on the basis of 15:574.4. Davis was convicted of second-degree murder on 28 November 1979. Davis was sentenced pursuant to the 1978 version of LA. REV. STAT. ANN. 14:30.1, which provided: "Whoever

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

commits the crime of second degree murder shall be punished by life imprisonment at hard labor without the benefit of probation or suspension of sentence and shall not be eligible for parole for forty years." See LA. REV. STAT. ANN. 14:30.1 (History and Source of Law--1978 amendments) (West 1986).** Pursuant to 14:30.1, Davis will not be eligible for parole until the year 2019.

The threshold question in this case is whether Davis's complaint presents a justiciable controversy under the constitutional case-or-controversy requirement. See United States Const. Art. III, § 2, cl. 1. Although neither party has raised this issue, this Court is required to do so sua sponte. United States v. Barrett, 837 F.2d 1341, 1345 (5th Cir. 1988), cert. denied, 492 U.S. 926 (1989).

A litigant who invokes the jurisdiction of the federal courts must satisfy the requirement of Article III by alleging an actual case or controversy. Cross v. Lucius, 713 F.2d 153, 158 (5th Cir. 1983). The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests; the dispute must be definite and concrete, not hypothetical or abstract. Id. at 158-59.

Davis will not have served forty years of his prison term prior to 2019, and whether he will be denied parole eligibility

** 14:30.1 was amended later in 1979 to reflect a punishment of "life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence." The provision for parole eligibility after 40 years was removed from the statute.

at that time is speculative. As such, his suit "has not ripened into the definite and concrete controversy" necessary for the adjudication of the claim. Cross, 713 F.2d at 159. Because Davis failed to present an actual, justiciable case or controversy to the Court, the dismissal of the complaint by the district court was correct, albeit it was for different reasons.

The dismissal by the district court was a dismissal of the petition on the merits. Because Davis 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.