

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5209  
Conference Calendar

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WARREN DICKERSON,

Plaintiff-Appellant,

versus

RICHARD L. STALDER,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 92-CV-1500  
- - - - -  
(November 1, 1993)

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

PER CURIAM:\*

Warren Dickerson challenges the dismissal of his 42 U.S.C. § 1983 suit for failure to exhaust state habeas remedies pursuant to 28 U.S.C. § 2254(b). To determine if a section 1983 claim must be brought initially through habeas corpus proceedings, a distinction is made "between claims that would merely enhance eligibility for accelerated release and those that would create entitlement to such relief." Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). The latter

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

claim requires the section 1983 plaintiff to apply for writ of habeas corpus. Id.

A review of Dickerson's brief indicates that his arguments, if successful, would entitle him to immediate or earlier release from prison. For this reason, Dickerson must bring his claim initially as an application for writ of habeas corpus.

Dickerson failed to exhaust his habeas remedies before bringing this civil rights action. A habeas applicant in federal court must exhaust state remedies. 28 U.S.C. § 2254(b). The district court did not err in this portion of the analysis. This portion of the judgment is AFFIRMED.

By treating his section 1983 claim as an application for writ of habeas corpus, the district court overlooked the possible prescription problem that Dickerson could have if, after exhausting his habeas remedies, he still has a section 1983 claim. See Richardson v. Fleming, 651 F.2d 366, 375 (5th Cir. 1981).

Therefore, IT IS ORDERED that the judgment is VACATED in part and REMANDED to the district court to determine the necessity of a stay of action pending the exhaustion of habeas remedies.