

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7218  
Summary Calendar

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OTIS LEE FAIRLEY,  
  
Plaintiff-Appellant,  
  
v.  
  
BILL ALLAIN, etc., ET AL.,  
  
Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
March 25, 1993

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March 25, 1993

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.\*

PER CURIAM:

This case was filed over seven years ago and has twice before reached this court and been remanded for further proceedings. Although the procedural posture of this appeal is imperfect, the time has come to lay the case to rest.

Fairley, confined to imprisonment for life for committing murder, purports to appeal the district court's denial of habeas corpus relief.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Fairley "seeks relief from serving all or part of his sentence"<sup>1</sup> because, during the pendency of his direct appeal, he was confined at the Mississippi State Penitentiary at Parchman. This confinement was in contravention of a directive from the Mississippi Supreme Court ordering Fairley returned to the Hinds County Detention Center. The Mississippi Supreme Court affirmed Fairley's conviction for murder in February 1985. Fairley v. State, 467 So.2d 894 (Miss.), cert. denied, 474 U.S. 855 (1985). Assuming that Fairley was illegally housed in the state penitentiary during that time, this fact in no way undermines or conflicts with the fact or length of his current confinement. Because it does not implicate the legality of Fairley's confinement, it cannot be the basis for federal habeas relief. Presier v. Rodriguez, 411 U.S. 475, 485-86, 93 S. Ct. 1827, 36 S. Ct. 439 (1973).

The appeal is therefore **DISMISSED** as frivolous. See Fifth Cir. Local R. 42.2.

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<sup>1</sup> In his reply brief, Fairley contends that he has not abandoned his § 1983 claim. He did not raise this issue in his appellate brief. This court will not consider issues raised for the first time in a reply brief. U.S. v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 92 (1989).