

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8691
Summary Calendar

DAWUD AL-FARUQ, ET AL.,

Plaintiffs,

DAWUD AL-FARUQ,

Plaintiff-Appellant,

versus

JAMES H. GRANBERRY and
TEXAS DEPT. OF CRIM. JUST.,
Parole Division,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-91-CV-445)

(February 18, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Al-Faruq is the only remaining plaintiff in a § 1983 lawsuit that broadly challenged the policies and practices of the Texas Board of Pardons and Paroles. The district court

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dismissed the complaint without prejudice, and finding no error we affirm.

Several of Al-Faruq's issues have been resolved against him in previous cases. For instance, this court has held that the Texas parole statutes create no constitutionally protected liberty interest in parole. Creel v. Keene, 928 F.2d 707, 712 (5th Cir.), cert. denied, 111 S. Ct. 2809 (1991). To the extent Al-Faruq cites portions of the Parole Board rules that have not heretofore been addressed in federal court, his complaint still fails, because he made no allegations concerning how he was affected by those rules.

Second, the accrual of good conduct time under Texas law, being a privilege and not a right, does not confer a constitutional liberty interest on prisoners. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 99 S. Ct. 2100 (1979). No claim was stated in this regard.

Third, § 1983 relief is not available for Al-Faruq's contention that changes in Texas parole law violated the state constitution's separation of powers clause, as this raises no federal constitutional issue. Thomas v. Torrez, 717 F.2d 248 (5th Cir. 1983), cert. denied, 456 U.S. 1010 (1984). To the extent he alleges an ex post facto clause violation arising from changes in the law removing the governor's power to revoke parole of persons convicted for an offense committed on or after November 28, 1983, Al-Faruq alleged no facts suggesting he was personally injured by this change.

Fourth, Al-Faruq argues that the "automatic parole revocation rule," which applies if a prisoner is convicted of a new felony or misdemeanor while on parole, unconstitutionally violates due process. Aside from being legally conclusionary, this claim also states no facts alleging how this rule was invoked against Al-Faruq.

This court does not sit to entertain hypothetical challenges to state statutes. In the few instances that the complaint alleged claims that have not been previously foreclosed, there were no facts demonstrating that Al-Faruq was injured by the laws or regulations of which he now complains. There was therefore no cognizable legal claim.

AFFIRMED.