UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8704
Summary Calendar

THOMAS DAVID TINER,

Petitioner-Appellant,

VERSUS

D. POPPELL, Warden of Retrieve
Unit of Texas Dept. of Corrections, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(MO 92 CV 134)

(May 12, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellant, a Texas Department of Criminal Justice inmate, appeals the district court's grant of summary judgment dismissing his habeas petition. We affirm.

Appellant'S parole was revoked because of threats he made against his parole officer during a pre-revocation interview. He had been arrested on a pre-revocation warrant for allegedly threatening a state trooper.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant first argues that his parole was revoked because he threatened to sue his parole officer, speech which he claims is protected by the First Amendment. The record, however, shows that, at a pre-revocation interview, Appellant threatened not only to sue the parole officer, but made menacing and threatening gestures and speech which caused the probation officer to fear physical injury. These physically threatening gestures and speech are the reason his probation was revoked and are not constitutionally protected. See Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942); Garza v. Rodriguez, 559 F.2d 259, 260 (5th Cir. 1977), cert. denied, 439 U.S. 877 (1978).

Appellant's second contention, although not entirely clear from his papers, appears to be that he was required to testify without presence of counsel at the preliminary hearing which violated his privilege against self-incrimination. The record shows that he protested his innocence at the hearing but, thereafter, became belligerent despite repeated warnings and was finally removed from the hearing. There is no indication that his behavior or statements at this hearing were used to revoke his parole. In fact, the record clearly shows that his parole was revoked because of the physical threats made at the pre-revocation interview.

Next Appellant asserts that his right to the effective assistance of counsel was violated. This argument is unavailing because an inmate does not have a Sixth Amendment right to counsel at a parole revocation hearing since such a hearing is not a

"criminal proceeding." Morrissey v. Brewer, 408 U.S. 471, 480-81, 489 (1972); Woods v. Texas, 440 F.2d 1347, 1348 (5th Cir. 1971).

Appellant also claims due process violations during the parole revocation process because he was not permitted to cross-examine witnesses and challenge evidence and because the revocation report did not include evidence from his mother allegedly favorable to his position. Any restriction on his right to cross-examination was caused by the fact that he was extremely disruptive at the hearing, and was removed after he ignored several cautions in that regard. By his conduct, Appellant limited his own opportunity to cross-examine. His contention is without merit. Delaware v. Van Arsdall, 475 U.S. 673 (1986).

The record does not reflect that Appellant's mother testified at the hearing. Appellant has moved this Court to include as an attachment to his brief an alleged affidavit from his mother supplying this missing information. We deny that motion, however, because these materials were never submitted to the district court. See Brown v. Estelle, 701 F.2d 494, 495-96 (5th Cir. 1983); Hart v. Estelle, 634 F.2d 987 (5th Cir. 1981).

Finally, Appellant asserts to us that "[T]he extension [sic] of sentence is void if reversed!" This assertion fails to raise a constitutional issue. See Ross v. Estelle, 694 F.2d 1008, 1012 (5th Cir. 1983).

Motion DENIED; judgment AFFIRMED.