

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1151
Conference Calendar

BOYD BALLARD,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Dep't of Criminal Justice,
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CV-197-K
- - - - -

(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

A federal court will entertain a petition for a writ of habeas corpus from a state inmate "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In this case, a state inmate proceeding in forma pauperis has petitioned for a federal writ of habeas corpus to obtain custody of the record of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

his criminal trial for use in developing federal habeas-corpus claims.

The brief Boyd Ballard filed in his direct appeal contains references to the trial record. Because Ballard had access to the trial record in his direct appeal, there is no constitutional requirement that he obtain physical custody of the record in this federal habeas-corpus action. See Smith v. Beto, 472 F.2d 164, 165 (5th Cir. 1973). In Smith v. Beto, moreover, this Court noted that the appellant had demonstrated no need for the transcript to prove his asserted claim. Ballard has also failed to demonstrate a need because he has not yet presented his federal habeas-corpus claims.

Ballard has failed to show a constitutional violation relating to his state criminal trial. His claim concerning the transcript, therefore, is not cognizable under 28 U.S.C. § 2254. The district court's determination that it lacked "subject matter jurisdiction" over this case, however, amounts to a loose application of that terminology. As this Court has pointed out, "[w]hether a federal court has jurisdiction to decide a case and whether a plaintiff has a cause of action under a federal statute are distinct inquiries that must be addressed separately." Daigle v. Opelousas Health Care, Inc., 774 F.2d 1344, 1346 (5th Cir. 1985). Here, Ballard invoked the jurisdiction of the court by using a § 2254 petition to present his claim. Nevertheless, he failed to present a cognizable cause of action.

Because the dismissal can be upheld on grounds not specified by the district court, a reversal is inappropriate. See Bickford

v. Int'l Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981)
(reversal is inappropriate if ruling of district court can be affirmed on any grounds, regardless whether those grounds were used by district court). Nevertheless, the dismissal should be modified to be with prejudice because Ballard has not pleaded sufficiently to receive habeas-corpus relief.

AFFIRMED AS MODIFIED.