

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1296
Summary Calendar

FRANK ROGER MILLARD,

Plaintiff-Appellant,

VERSUS

JOHN C. CREUZOT, Judge of
Criminal District Court #4,

Defendant-Appellee,

Appeal from the United States District Court
for the Northern District of Texas
3:92 CV 2392 P

June 3, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

Millard appeals the dismissal of his § 1983 action against Texas state Judge Creuzot. We affirm.

I.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Frank Roger Millard is currently in the custody in the Texas Department of Criminal Justice serving the remainder of a 35-year sentence imposed following parole revocation.

Miller contends he is entitled to a two-year credit against the length of his current sentence because a prior conviction was subsequently overturned by Texas Court of Criminal Appeals. He also seeks monetary damages. The magistrate judge entered findings, conclusions, and recommended dismissal of Millard's suit for damages because of immunity judicial officers enjoy. The district court adopted the magistrate judge's recommendation and dismissed the case.

II.

This Court generally bars consideration of § 1983 claims that directly or indirectly challenge the constitutionality of a state conviction or sentencing decision prior to exhaustion of habeas remedies. **Serio v. Members of La. State Bd. of Pardons**, 821 F.2d 1112, 1117 (5th Cir. 1987). The exhaustion requirement "is based on the comity-inspired principle that state courts should be given first opportunity to rule on the merits of a prisoner's claim attacking the constitutionality of the fact or duration of his incarceration." **Id.** at 1114 (citation omitted). Millard's contention that he is entitled to a two-year credit against his current term of incarceration would ordinarily be pursued through habeas corpus.

However, Judge Creuzot is entitled to absolute immunity, and thus, even if Millard's claim is deserving of habeas relief, Judge

Creuzot would not be liable for monetary damages. **Young v. Biggers**, 938 F.2d 565, 569 n.5 (5th Cir. 1991); **Serio**, 821 F.2d 1114-15. Because dismissal of this action resolves none of the merits underlying Millard's state law claim, there is no "sound basis to defer decision on the immunity issue." **Id.** at 1115. We therefore affirm the district court's judgment.

AFFIRMED.