

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1309
Conference Calendar

MICHEIL LEWIS,

Plaintiff-Appellant,

versus

JACK YOUNG, ET AL.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-62
- - - - -
(June 22, 1993)

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Micheil Lewis argues on appeal that he is being unlawfully confined, harassed, and "railroaded" into prison because of the racial prejudice of the defendants. His § 1983 civil rights complaint sought to compel the defendant judge, sheriff, and district attorney of Bailey County, Texas, to hand up an indictment, provide Lewis with an attorney, and transfer the trial to another jurisdiction. At this juncture, however, there is no relief available to Lewis via the federal courts. The

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dismissal is therefore AFFIRMED.

While Lewis's complaint appears to seek mandamus relief, "a federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought." Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973). By analogy, federal courts have no such authority over state prosecutors and jailers.

Moreover, challenges to the fact or length of a state prisoner's confinement should be pursued via habeas corpus, and not § 1983. Serio v. Members of Louisiana State Board of Pardons, 821 F.2d 1112, 1115 (5th Cir. 1987). In cases involving pre-trial detainees, 28 U.S.C. § 2241 provides the proper vehicle. Dickerson v. State of Louisiana, 816 F.2d 220, 224 (5th Cir.), cert. denied, 484 U.S. 956 (1987). His state remedies must therefore be exhausted before he may make these claims in federal court pursuant to the writ of habeas corpus. Serio, 821 F.2d at 1117.

When a Texas prisoner brings such a civil rights action before a habeas petition, however, the district court should dismiss the petition without prejudice and direct the plaintiff to promptly pursue habeas remedies. Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992). The statute of limitations is tolled during the pendency of habeas proceedings. Id.