

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1589  
Conference Calendar

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ROBERT PRESTON,

Plaintiff-Appellant,

versus

HONORABLE FRANCIS MALONEY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-0647-D  
- - - - -  
(November 1, 1993)

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

PER CURIAM:\*

Generally, federal courts lack "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, 1275-76 (5th Cir. 1973); see Lamar v. 118th Judicial Dist. Court of Tex., 440 F.2d 383, 384 (5th Cir. 1971). Unlike Moye and Lamar, however, Robert Preston has alleged facts

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

which arguably provide a basis for federal habeas relief. In this circumstance, the Court has previously construed the petition liberally as requesting habeas relief. See Russell v. Knight, 488 F.2d 96, 97 (5th Cir. 1973). Accordingly, the judgment of the district court is VACATED and the cause is REMANDED for further proceedings.