

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1648
Conference Calendar

LOY GENE BEARD,

Petitioner-Appellant,

versus

U.S. PAROLE COMMISSION,
ET AL.,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:93-CV-016-C
- - - - -
(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Appellant Loy Gene Beard, who is serving the remainder of a federal sentence as a parole violator, has appealed the dismissal of his habeas corpus petition, 28 U.S.C. § 2241, for failure to exhaust his administrative remedies. We affirm.

Beard admittedly did not appeal the Parole Commission's 1992 orders revoking his parole and setting his presumptive parole date. The orders informed him that he had the right to appeal them to the National Appeals Board.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Beard contends that he was not required to appeal the said orders because neither the Parole Commission nor the National Appeals Board had authority or jurisdiction to order him to serve the violator term. He bases this on his assertion that he has fully served his sentence.

"A prisoner challenging a Parole Commission decision is required to exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241." Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). This Court applies the abuse-of-discretion standard in reviewing a district court's dismissal of such a petition for failure to exhaust administrative remedies. Id.

In order to exhaust, Beard "must file an appeal [of the Parole Commission's decisions] with the National Appeals Board." Id. This is required even if an appeal would be untimely, because "the Board, in its discretion, may allow [Beard] to file the appeal[s] out of time and rule on the merits of [his] contentions." Id. In Fuller v. Rich, the Court held that such an appeal would not be futile even though Fuller argued that his close proximity to release made the appeal process a futile gesture. Accordingly, the district court did not abuse its discretion by dismissing Beard's petition without prejudice for failure to exhaust his administrative remedies.

JUDGMENT AFFIRMED.