

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1836
Conference Calendar

ANTHONY RAY GAINES,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Dept. of Criminal Justice,
Institutional Division,

Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-222-C

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(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Anthony Ray Gaines must first pursue state and federal habeas remedies prior to asserting this claim under 42 U.S.C. § 1983 because he is attempting to challenge indirectly the legality of his conviction. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). In general, prisoners who challenge the constitutionality of their convictions or sentences must first exhaust their state and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

federal habeas remedies before seeking relief under § 1983. Id. at 1117. Accordingly, federal courts should ordinarily decline to address the merits of a potential § 1983 claim that must be exhausted through habeas review. See id.; William v. Dallas County Comm'rs, 689 F.2d 1212, 1214-15 (5th Cir. 1982), cert. denied, 461 U.S. 935 (1983). 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." Serio, 821 F.2d at 1114 (citation omitted). When a potential § 1983 claim is inextricably intertwined with, and not so factually distinct from, a plaintiff's other claims as to readily permit the district court to analyze the potential claim separately, habeas relief must first be pursued. Id. at 1119.

Gaines admits that he has not pursued habeas remedies. Therefore, the district court's dismissal of his § 1983 complaint, without prejudice, is AFFIRMED.

IT IS FURTHER ORDERED that the statute of limitations is deemed tolled while Gaines pursues habeas relief. Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992).