

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1921  
Conference Calendar

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ANTHONY EUGENE GILL,

Plaintiff-Appellant,

versus

DAVID W. WILLIAMS, Sheriff,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:93-CV-648-Y  
- - - - -  
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

While incarcerated at the Tarrant County Jail, Anthony Eugene Gill filed a federal habeas corpus proceeding in the Northern District of Texas against the Sheriff of Tarrant County, David W. Williams. During the pendency of the habeas proceeding, Williams transferred Gill to another institution outside the district without seeking leave of court. Gill filed a civil rights action against Williams alleging that the transfer violated his constitutional rights to access to the courts, due

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

process, and equal protection. Finding no constitutional or statutory provision requiring state authorities to obtain the approval of a federal district court prior to transferring an inmate to another institution, the district court dismissed the complaint as frivolous pursuant to 28 U.S.C. § 1915(d).

Gill argues that his transfer violated Fed. R. App. P. 23(a). Rule 23(a) "was designed to prevent prison officials from impeding a prisoner's attempt to obtain habeas corpus relief by physically removing the prisoner from the territorial jurisdiction of the court in which a habeas petition is pending." Goodman v. Keohane, 663 F.2d 1044, 1047 (11th Cir. 1981). "To effectuate this purpose, courts have held that transfers made in violation of the rule do not divest a court reviewing a habeas decision of its jurisdiction, regardless of the petitioner's absence from the territorial jurisdiction of the court." Id.; see Schultz v. United States, 373 F.2d 524, 524 (5th Cir. 1967).

Assuming the rule was violated in this case, Gill has not been denied access to the courts, due process, or equal protection because the federal habeas court still has jurisdiction to substitute his new custodian as party defendant in the habeas proceeding. Gill should file an appropriate motion in that action. Because Gill's claim that his civil rights were violated by the state authorities' failure to comply with Fed. R. App. P. 23(a) lacks an arguable basis in law, the district court did not abuse its discretion by dismissing the complaint as frivolous pursuant to 28 U.S.C. § 1915(d). See Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992).

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AFFIRMED.