

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1965
Conference Calendar

LOUIS CLIFFORD BRADFORD,
Plaintiff-Appellant,
versus
BRIAN JOHNSON, Officer, ET AL.,
Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-1558-H
- - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact of confinement. Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). A 42 U.S.C. § 1983 action is the appropriate remedy for recovering damages for mistreatment or for illegal administrative procedures. Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). To determine which remedy a prisoner should pursue, the Court looks beyond the relief sought to determine whether the claim, if proved, would factually undermine or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conflict with the state court conviction. Id. at 373. If the basis of the claim goes to the constitutionality of the conviction, a petition for habeas corpus relief is the exclusive initial federal remedy. Id.

Louis Clifford Bradford contends that he was arrested and searched without probable cause. Such claim challenges the constitutionality and fact of his confinement and conviction. Therefore, this Court cannot reach the issues he presents at this time. See Hernandez v. Spencer, 780 F.2d 504, 504 (5th Cir. 1986). Bradford must first exhaust his state court remedies, before pursuing federal habeas relief, which he has not yet done. See 28 U.S.C. 2254(b).

Bradford's exhaustion requirement could be excused on the grounds that the state courts have unreasonably delayed in ruling on his state actions. Such an unreasonable delay would render any state court remedies ineffective. Deters v. Collins, 985 F.2d 789, 795 (5th Cir. 1993). However, Bradford filed his federal action less than a month after he filed his direct appeal and state habeas action. Additionally, Bradford does not contend that there has been any unreasonable delay.

The district court properly dismissed without prejudice Bradford's habeas claims. Dismissing the action without prejudice tolls the two-year Texas statute of limitations for Bradford's § 1983 action while he pursues available state and federal habeas remedies. See Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir 1992).

AFFIRMED.