UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1981
Summary Calendar

DANNY MAC EASTERLY,

Petitioner-Appellant,

VERSUS

DAN SMITH, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-2053-R)

(July 19, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Danny Mac Easterly challenges the district court's dismissal of his habeas petition for failure to exhaust his state remedies. We affirm.

I.

In October 1993, Easterly filed a petition for habeas relief in federal district court alleging a violation of his right to a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

speedy trial under the Sixth Amendment. Easterly alleged that he was being held in Bell County, Texas jail on a detainer filed by Navarro County, Texas, concerning an alleged theft of over $750. Easterly stated that he made a pretrial motion in state court for a speedy trial or a dismissal of the prosecution, but that he was not aware of the court's decision. He also stated that he applied for a writ of mandamus in the Texas Court of Criminal Appeals, which had been denied.

The district court dismissed Easterly's habeas petition without prejudice because he had not exhausted his state court remedies. Easterly subsequently filed a notice of appeal, including a request for a certificate of probable cause ("CPC"), which the district court denied.

II.

In denying Easterly's request for a CPC, the district court apparently analyzed his habeas petition under 28 U.S.C. § 2254. However, pretrial habeas petitions do not fall under that section. Rather, because Easterly is attacking the Navarro County detainer, a document not issued by a state court, the district court should have analyzed his petition under 28 U.S.C. § 2241. **See Dickerson v. State of Louisiana**, 816 F.2d 220, 224 (5th Cir.), **cert. denied**, 484 U.S. 956 (1987). As a result, a CPC to appeal is unnecessary because "the detention complained of [does not] arise[] out of process issued by a state court." Fed. R. App. P. 22(b).

In his petition, Easterly argues that he has been denied his Sixth Amendment right to a speedy trial and his Fourteenth

Amendment right to a fair trial as a result of the State's unnecessary delay in bringing him to trial. However, a federal habeas court generally will not "adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court." **Braden v. 30th Judicial Circuit Court**, 410 U.S. 484, 489 (1973). In this case, Easterly has pointed to no "special circumstances," which would require us to make an exception to the general rule. **See id.** Moreover, we have declined to hold that the constitutional right to a speedy trial qualifies as a **per se** "special circumstance" which would obviate the exhaustion requirement. **See Dickerson**, 816 F.2d at 227.

To the extent that Easterly seeks a speedy trial on the Navarro County charge, he may seek federal habeas relief provided that he has exhausted his state court remedies. **See Braden**, 410 U.S. at 490. For example, in **Braden**, the petitioner made repeated unsuccessful demands on the state court to bring his case to trial, "offering the [Kentucky] courts an opportunity to consider on the merits his constitutional claim of the **present** denial of a speedy trial." **Id**. By contrast, Easterly alleges that, on one occasion, he moved in state court for a fair and speedy trial, and that the court's decision was "unknown." As a result, Easterly has not shown that he placed his constitutional claims squarely before the state court. The district court therefore did not err in holding that he failed to exhaust his state remedies.

AFFIRMED.