

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3125
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD SKINNER,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-2751 (CR-77-596-B2))

(December 27, 1993)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Ronald Skinner, an inmate of the Louisiana State Penitentiary at Angola, appeals the dismissal of his petition for habeas corpus relief under 28 U.S.C. § 2241. For the reasons

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

set forth below, we affirm the district court's disposition of Skinner's case.

I

FACTS AND PROCEEDINGS

Skinner filed a petition for habeas corpus relief alleging that a federal parole violator warrant, placed upon him as a detainer, violated his due process rights. Although Skinner identified his habeas petition as a § 2255 motion, the district court correctly treated it as a § 2241 action.

According to Skinner's memorandum in support of his habeas petition, he was sentenced in 1978 to serve 15 years imprisonment in the Eastern District of Louisiana for bank robbery. He served five years of his term before being released on parole in 1983. While on parole he was arrested for manslaughter with the use of a firearm. In 1985 Skinner was convicted and sentenced to a 21-year-term on the manslaughter charge and a consecutive two-year-term on the firearm charge. After Skinner arrived at Angola, the United States Marshals Service for the Middle District of Louisiana placed a federal parole violator warrant as a detainer in Skinner's name with the warden.

The district court noted that a federal parolee in state custody is entitled to the "due process safeguards of a revocation hearing" at the time when the warrant is executed and the parolee is taken into federal custody. The court ruled that Skinner had not established a constitutional violation, however, because he was still in state custody. The court therefore dismissed Skinner's

habeas petition, granting him a certificate of probable cause to appeal. After a question concerning the timeliness of Skinner's appeal arose and we remanded the case, the district court found that the notice of appeal was timely.

II

ANALYSIS

Skinner argues that the Department of Justice lost jurisdiction over him permanently when it allowed the State of Louisiana to take him into custody without completing his federal sentence following his parole violation. He argues in the alternative that his parole was never revoked so that he remained in "federal custody" and completed his federal sentence while serving his state prison term.

The propriety of the district court's identification of Skinner's habeas petition as a § 2241 action lies in the fact that he challenges the extent to which his federal sentence had been executed, not the legality of his federal or state conviction or sentence. See United States v. Gabor, 905 F.2d 76, 77 (5th Cir. 1990). Section 2241 provides the general jurisdictional basis for federal courts to consider collateral attacks to both state and federal court judgments. Story v. Collins, 920 F.2d 1247, 1250 (5th Cir. 1991).

Initially, Skinner's § 2241 action appears to raise a novel jurisdictional issue which, as shall be seen, the court need not address due to the lack of merit in his claim. This jurisdictional issue involves an interpretation of § 2241(d) in light of Gabor and

United States v. Blau, 566 F.2d at 527 (citing Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973)); Gabor, 905 F.2d at 78. As Skinner is incarcerated in Angola, which is located in the Middle District of Louisiana, jurisdiction would appear to lie in that district rather than in the Eastern District of Louisiana where Skinner filed his petition.

Unlike Skinner, both Blau and Gabor were federal prisoners. Section 2241(d), though, is directed to state prisoners. A prisoner confined under the judgment of a state court, in a state that has more than one federal judicial district, has the option of filing his federal habeas action in either of two federal district courts, the one located in the district where he is in custody or the one located in the district where the state court that convicted and sentenced him is located. § 2241(d); Story, 920 F.2d at 1250-51. According to Skinner's habeas petition, he was convicted in a state court in St. Charles Parish, which is in the Eastern District of Louisiana. 28 U.S.C. § 98(a). Thus it would appear that, under § 2241(d), jurisdiction is proper in the Eastern District of Louisiana as well as in the Middle District.

What is less clear, however, is how Skinner's status as a state prisoner challenging a federal parole violator warrant affects this analysis. We have noted that the interpretation of § 2241 as requiring jurisdiction in the district where the prisoner or his custodian is located is "unfortunate" because the necessary records and witnesses are often more readily available in the district where sentencing took place, and the district containing

prisons receive an inordinate proportion of habeas petitions. Story, 920 F.2d at 1250. Story too entailed a state prisoner's habeas petition.

Here, we are able to conserve judicial resources if we find that we may affirm the district court's denial of Skinner's habeas petition by considering the merits of his claim. See United States v. Mares, 868 F.2d 151, 152 & n.1 (5th Cir. 1989).

A parole violator is taken into custody for a parole violation only when the Parole Board executes the violator warrant to incarcerate the prisoner. Tijerina v. Thornburgh, 884 F.2d 861, 865 (5th Cir. 1989) (citing Moody v. Daggett, 429 U.S. 78, 87-88, 97 S.Ct. 274, 50 L.Ed.2d 236 (1976)). The Parole Board may, as it did in this case, place a parole violator warrant on a prisoner as a detainer then wait to execute the warrant until the prisoner has completed his sentence for any crimes he committed while on parole. Id. at 865-66. Here, the warrant was not executed, and Skinner does not argue that it was. Contrary to what Skinner does argue, however, the Parole Board neither lost jurisdiction over him nor allowed his parole violator sentence to expire while he was incarcerated in the state prison.

Generally, there is no constitutional right to a parole revocation hearing immediately after the issuance of a parole violation warrant, and Skinner does not argue to the contrary. Moody, 429 U.S. at 87-88 & n.9; United States v. Fisher, 895 F.2d 208, 211 (5th Cir.), cert. denied, 495 U.S. 940 (1990). Thus, if district court jurisdiction were proper, we would affirm the

district court on the merits; and even if district court jurisdiction were not proper, we could and would address the merits and affirm the district court's decision in the interest of conserving judicial resources. Mares, 868 F.2d at 152 n.1. It follows, then, that as Skinner's appeal is without merit as a matter of law, it is unavailing. We thus affirm the district court on each ground, in the alternative.

AFFIRMED.