

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3785
Conference Calendar

CURTIS GORDON,

Plaintiff-Appellant,

versus

JOHN P. WHITLEY,
Warden, Louisiana State Penitentiary,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-93-856-B-I
- - - - -

(May 17, 1994)

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

BY THE COURT:

Louisiana State Penitentiary prisoner Curtis Gordon filed in district court a pleading that he denominated, "Motion for Writ of Prohibition/Mandamus and Injunction Seeking Release Into Open Population." He alleged that he was placed in restricted lockdown in September 1992. He complained that his retention in lockdown violates several constitutional rights. He prayed for a prohibition against his continuation in lockdown, mandamus compelling his release into the general population, unspecified injunctive relief, and damages.

The district court dismissed the case as frivolous pursuant to 28 U.S.C. § 1915(d), stating, "The United States District Court lacks jurisdiction to review actions in the nature of

mandamus to compel state officers or employees to perform duties owed the plaintiff. 28 U.S.C. § 1361." The district court entered judgment accordingly and denied Gordon leave to appeal in forma pauperis (IFP).

Moving in this Court for IFP, Gordon must show that he is a pauper and that he will present a non-frivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Gordon has filed an affidavit showing that he is a pauper.

In the brief that Gordon submitted to this Court with his IFP application, he argues that he has a right to relief pursuant to federal civil rights statutes. The only remedy for which he argues is mandamus.

Federal mandamus applies to officers, employees, and agencies of the United States. It does not apply to officers, employees, and agencies of states. 28 U.S.C. § 1361; see Russell v. Knight, 488 F.2d 96, 97 (5th Cir. 1973) ("federal courts have no general power to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought").

Because a federal court may not grant the remedy that Gordon seeks, he has presented no issue of arguable merit. The appeal is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5th Cir. R. 42.2.

IFP DENIED; APPEAL DISMISSED.