

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4044
Conference Calendar

PATICUS RENO,

Plaintiff-Appellant,

versus

RICHARD L. STALDER,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 92-CV-1726
- - - - -
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Paticus Reno challenges the dismissal of his 42 U.S.C. § 1983 suit as a dismissal for failure to exhaust state habeas remedies pursuant to 28 U.S.C. § 2254(b). To determine if a section 1983 claim must be brought initially through habeas corpus proceedings, a distinction is made "between claims that would merely enhance eligibility for accelerated release and those that would create entitlement to such relief." Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1119 (5th

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cir. 1987). The latter claims require the section 1983 plaintiff to apply initially for writ of habeas corpus. Id.

A review of Reno's brief indicates that if his suit is successful, Reno would be entitled to no parole supervision upon his release and an earlier release because of the return of his good time. For this reason, Reno must bring his claim initially as an application for writ of habeas corpus.

Reno failed to exhaust his habeas remedies before bringing this civil rights action. A habeas applicant in federal court must exhaust state remedies. 28 U.S.C. § 2254(b). The district court did not err in this part of the analysis. This portion of the judgment is AFFIRMED.

By treating his section 1983 claim as an application for writ of habeas corpus, the district court overlooked the possible prescription problem that Reno could have if, after exhausting his habeas remedies, he still has a section 1983 claim. See Richardson v. Fleming, 651 F.2d 366, 375 (5th Cir. 1981).

Therefore, IT IS ORDERED that the judgment is VACATED in part and REMANDED to the district court to determine the necessity of a stay of action pending the exhaustion of habeas remedies.