

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-4062

(Summary Calendar)

MELVIN THOMAS COOK,

Plaintiff-Appellant,

VERSUS

U.S. PAROLE COMMISSION,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-517)

(January 11, 1994)

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

PER CURIAM:*

The defendant, U.S. Parole Commission ("the Commission"), revoked the plaintiff, Melvin Thomas Cook's parole because it found that Cook, while on parole, attempted to commit armed robbery. Cook filed a petition for a writ of habeas corpus in the district court, pursuant to 28 U.S.C. § 2241 (1988), and the district court denied relief. Cook appeals. Finding no reversible error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cook argues that the Commission revoked his parole based on an erroneous finding that he conspired to commit armed robbery. Cook contends that he did not conspire to commit armed robbery, because his only co-conspirator was a government informer,¹ and therefore the Commission's action was arbitrary, capricious, and an abuse of discretion.² We disagree.

Cook's argument is without merit because his parole was revoked based on a finding that he attempted))not conspired))to commit armed robbery. In arguing that the Commission's decision was based on a finding of conspiracy, Cook relies on a notice of action letter dated July 12, 1988, which states that Cook "conspired to commit an armed robbery." Record on Appeal, vol. 1, at 96. However, this letter does not prove that a finding of conspiracy was the basis for revocation of Cook's parole. The

¹ See *United States v. Martino*, 648 F.2d 367, 405 (5th Cir. 1981) ("[O]ne who acts as a government agent and enters into a purported conspiracy in the secret role of an informer cannot be a co-conspirator. . . . In that situation there can be no conspiracy because it takes two to conspire and the government informer is not a true conspirator." (citations omitted)), *cert. denied*, 456 U.S. 949, 102 S. Ct. 2020, 72 L. Ed. 2d 474 (1982).

² Cook presents several subsidiary arguments: (1) that the evidence was insufficient to support a finding of conspiracy, since the evidence lacked sufficient indicia of reliability; (2) that the Commission violated the rule of stare decisis by finding that Cook conspired to commit armed robbery, since prior decisions of this Court hold that an agreement with a government informant does not amount to a conspiracy, and since Cook's only co-conspirator was a government informant; and (3) that the government is estopped from arguing that Cook conspired to commit armed robbery, since the government has admitted that no such conspiracy occurred. For the reasons stated *infra*, we are not persuaded by any of these arguments.

letter plainly states that Cook violated his parole "as a result of an *attempted* armed robbery." *Id.* (emphasis added).

Several other documents state that Cook "conspired to commit an armed robbery"))a notice of action on appeal from the National Appeals Board, *see id.* at 97, a statutory interim hearing summary, *see id.* at 98, and a memorandum from Commissioner Getty. *See id.* at 95. The magistrate judge who reviewed Cook's writ application held that the Appeals Board's statement was inadvertent.³ We agree with the magistrate judge's holding and also hold that the statements in the statutory interim hearing summary and the Commissioner's memorandum were inadvertent as well. Both the summary and the memorandum explicitly state that Cook violated his parole by attempting to commit armed robbery. *See id.* at 94, 98. Furthermore, as the magistrate judge observed, the summary report of Cook's preliminary interview, *see id.* at 83, a letter to Cook from the Commission, *see id.* at 86, the revocation prehearing assessment, *see id.* at 88, and the revocation hearing summary, *see id.* at 90, all plainly state that Cook violated his parole by *attempting* to commit armed robbery. The record thus shows that Cook's parole was revoked because he *attempted* to commit armed robbery, and not because of a finding that he *conspired* to commit

³ The magistrate judge's report and recommendation were adopted as the ruling of the district court. We disagree with Cook's argument that the district court substituted its judgment for that of the Commission and held *de novo* that Cook's parole was revoked because he attempted to commit armed robbery. The district court merely concluded, based on a review of the entire record, that attempted armed robbery was the basis for the Commission's decision.

armed robbery.⁴ Cook's arguments are therefore without merit, and we **AFFIRM**.

⁴ Although Cook does not argue that the Commission erred in finding that he attempted to commit armed robbery, we note that that finding is supported by the record. We will affirm a decision of the Commission if it is supported by "some evidence." *Maddox v. United States Parole Comm'n*, 821 F.2d 997, 1000 (5th Cir. 1987). The record contains ample evidence to support a finding that Cook attempted to commit armed robbery.