

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-5202  
Summary Calendar

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WILLIAM DEXTER WHITE,

Petitioner-Appellant,

VERSUS

WAYNE SCOTT, Director,  
Texas Department Criminal Justice,  
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(9:93-CV-22)

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(June 17, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

William Dexter White appeals the district court's dismissal of his § 2254 habeas petition. We affirm the dismissal, but modify it to one without prejudice because we lack jurisdiction.

I.

On February 27, 1992, a prison disciplinary board convicted

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

White of creating a disturbance. He was sentenced to two days in solitary confinement and given a two-day credit for time spent in pre-hearing detention. He also received a fifteen-day cell restriction and loss of commissary privileges. No other penalties were imposed.

White unsuccessfully challenged the disciplinary action in a prison grievance proceeding on the ground that he had been denied procedural due process. He then filed this federal habeas petition challenging the constitutionality of the prison disciplinary proceeding. White did not first seek state habeas relief.<sup>2</sup>

The magistrate judge recommended that White's petition be denied on the merits. The district court overruled White's objections to the magistrate's report and denied the petition. The district court granted a certificate of probable cause to appeal.

## II.

We are obligated to examine the basis of our jurisdiction **sua sponte**. See **United States v. De Los Reyes**, 842 F.2d 755, 757 (5th Cir. 1988).

A writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact or duration of his confinement. See **Preiser v. Rodriguez**, 411 U.S. 475, 487 (1973); see also **Alexander v. Ware**, 714 F.2d 416, 418-19 (5th Cir. 1983). However, in this case, White's two-day sentence to solitary confinement has expired, and he was not denied parole or good time

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<sup>2</sup> The state has waived the issue of exhaustion. See **McGee v. Estelle**, 722 F.2d 1206, 1213 (5th Cir. 1984) (en banc).

credits as a result of the disciplinary action. Therefore, White's current term of incarceration would not be affected if his petition were successful, and as a result, no federal habeas jurisdiction exists in this case. **See Preiser**, 411 U.S. at 487.

Although we might construe White's allegations as a civil rights complaint under 42 U.S.C. § 1983,<sup>3</sup> even if we did, his claims would be moot. White does not seek monetary damages or declaratory relief, and because he does not allege that the duration or conditions of his current confinement are affected by the disciplinary action, injunctive relief is unnecessary. Therefore, any opinion which we would issue on the merits of a civil rights claim would be advisory.

We therefore affirm the district court's denial of habeas relief, but modify it to be without prejudice due to our lack of jurisdiction.

AFFIRMED as modified.

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<sup>3</sup> **See Richardson v. Fleming**, 651 F.2d 366, 372 (5th Cir. 1981) ("prisoner's **pro se** complaint . . . can only be dismissed for failure to state a claim if it appears 'beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'").