

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5508
Conference Calendar

DOUGLAS G. MITCHELL,

Plaintiff-Appellant,

versus

BOB OWENS, Chairman, Board of
Pardons & Paroles,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 93-CV-147

(May 19, 1994)

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

BY THE COURT:

IT IS ORDERED that Douglas G. Mitchell's motion to supplement the record is DENIED. This Court does not enlarge the appellate record with factual material not initially brought to the district court's attention. United States v. Flores, 887 F.2d 543, 546 (5th Cir. 1989).

"To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous." Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). The standard for determining whether the appeal is frivolous does not require probable success on the merits. Id. We "only examine[] whether the appeal involves `legal points

arguable on their merits (and therefore not frivolous).'" Id.
(citation omitted).

To recover under 42 U.S.C. § 1983, a plaintiff must prove that he was deprived of a federal right. See Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). The extent of a prisoner's liberty interest in parole-release matters is defined by state statute. See Gilbertson v. Texas Bd. of Pardons & Paroles, 993 F.2d 74, 75 (5th Cir. 1993). In Gilbertson, this Court held that the Texas statute does not create a constitutionally protected interest in a tentative parole date or other parole-release matters. Id.

Because the Texas statute does not create a constitutional right in parole matters, Mitchell's additional arguments concerning the propriety of the Board's decisions and reasoning in their review of Mitchell's parole potential do not implicate the denial of a federal right. See Gilbertson, 993 F.2d at 75; TEX. CODE CRIM. PROC. ANN. art. 42.18 § 8 (West Supp. 1994). Further, this Court need not construe Mitchell's complaint as a petition for habeas corpus because Mitchell has no cognizable constitutional interest in these parole issues; thus he is not entitled to habeas or 42 U.S.C. § 1983 relief. See Gilbertson, 993 F.2d at 75.

Mitchell's argument concerning the adequacy of the district court's de novo review of the record is also meritless. See Longmire v. Guste, 921 F.2d 620, 623 (5th Cir. 1991); 28 U.S.C. 636(b)(1).

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IT IS ORDERED that Mitchell's motion for leave to proceed on appeal in forma pauperis (IFP) is DENIED. Because the issues lack arguable merit, his appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.