

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7213  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CODA LLOYD VICE, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Mississippi  
(CA92-0343 (CR1:79-13(R)(R))

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( October 12, 1993 )

Before POLITZ, Chief Judge, JOLLY and DUHÉ, Circuit Judge.

PER CURIAM:\*

Coda Lloyd Vice, Jr. is serving a life sentence after a conviction in Mississippi state court for murder. The state sentence is being served in a federal facility pursuant to a plea agreement involving several federal offenses, the sentences on which have been fully served. Vice invokes 28 U.S.C. § 2255 in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

challenging his state sentence.

The district court found that Vice was not "in custody" for purposes of section 2255 and that it therefore lacked jurisdiction. We agree; the motion for relief under 28 U.S.C. § 2255 is dismissed for lack of jurisdiction.<sup>1</sup>

There is little merit to the suggestion that we should deem this *pro se* filing as a challenge under 28 U.S.C. § 2254 of Vice's state sentence on the murder conviction. Were we to deem this as a filing under section 2254 it would have to be dismissed on two equally sufficient grounds: (1) failure to name the proper party defendant, and (2) failure to exhaust state remedies under Rule 4 of the Rules Governing Section 2254 Cases. A petition may be dismissed summarily when it is apparent "from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court."

The dismissal is AFFIRMED.

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<sup>1</sup> See **Maleng v. Cook**, 490 U.S. 488 (1989); **Carafas v. Lavalee**, 391 U.S. 234 (1968).