

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7398
Conference Calendar

JOHN LOTT,

Plaintiff-Appellant,

versus

J. STEWART MURPHY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-92-598-B-N
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

John Lott, a Mississippi prisoner, appeals from the dismissal without prejudice of his 28 U.S.C. § 2254 petition for a writ of habeas corpus for failure to exhaust state remedies. Lott argues only that filing a post-conviction motion under Miss. Code Ann. § 99-39-5 (Law. Co-op. Supp. 1993), would be futile because state courts routinely deny motions challenging parole board decisions and do not allow in forma pauperis (IFP) appeals

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

from the denial to the supreme court under Nelson v. Bank of Mississippi, 498 So. 2d 365 (Miss. 1986).

A claim concerning a Mississippi prisoner's eligibility for parole is cognizable under the state post-conviction relief act. Milam v. Mississippi, 578 So. 2d 272, 273 (Miss. 1991).

Moreover, Lott points to no reasoned state court opinion rejecting an identical claim. See Deters v. Collins, 985 F.2d 789, 795 n.16 (5th Cir. 1993). Finally, the Mississippi Supreme Court recently held that IFP appeals are allowed from denials of state post-conviction motions in Johnson v. Mississippi, 623 So. 2d 265 (Miss. 1993), removing the procedural obstacle about which Lott complains. Accordingly, the state remedies available to Lott are adequate, and the district court correctly dismissed the petition without prejudice for failure to exhaust these remedies.

Lott has filed an unopposed motion to expand the record on appeal to include an order from the Mississippi Supreme Court in an unrelated case. We construe the motion as a Fed. R. App. P. 28(j) citation of supplemental authorities. We have considered the case Lott submitted and find it factually distinguishable from his claim. Moreover, the case does not contradict Milam.

AFFIRMED.