

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-8325

(Summary Calendar)

SCOTT LEWIS RENDELMAN,

Petitioner-Appellant,

VERSUS

BILL HEDRICK, Warden,
U.S. PAROLE COMMISSION,

Respondents-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-92-CA-650-JN)

(February 1, 1994)

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

PER CURIAM:*

The Petitioner, Scott Lewis Rendelman, is a federal prisoner who filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241 (1988), alleging that the defendant, U.S. Parole Commission ("the Commission") violated his right to due process of law by (1) failing to hold a timely hearing regarding rescission of his parole date, and (2) failing to take action on the rescission

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

once a hearing was scheduled, with the result that he was denied parole to which he was entitled. The district court denied relief on the grounds, *inter alia*, that Rendelman's petition had been rendered moot by Rendelman's release from his sentence.

Rendelman appeals, contending that his petition was not rendered moot. Rendelman remains in federal prison serving a second sentence, which commenced at the expiration of the sentence as to which he sought parole. Rendelman argues that he would have been able to commence serving his current sentence sooner, and therefore would be eligible for release sooner, if the Commission had granted him the parole to which he was entitled. Therefore, Rendelman argues, his petition was not moot because the district court should have ordered that the time he served on his original sentence as a result of the Commission's violation of his rights be credited against his current sentence. We disagree.

The magistrate judge observed that Rendelman has been released from the sentence as to which he was allegedly entitled to parole, and that Rendelman is not entitled to parole from the sentence which he is currently serving.¹ Therefore, the magistrate judge concluded, the Commission does not have jurisdiction over Rendelman. Rendelman does not dispute these findings,² and from

¹ The district court adopted the magistrate judge's report and recommendation.

² To the contrary, Rendelman conceded in his objections to the magistrate judge's report and recommendation that the Commission did not have jurisdiction. See Record on Appeal at 83 ("The magistrate finds that the Parole Commission lacks jurisdiction over me. While *this may be true at the present time*, the Commission will again have jurisdiction over me if the Court

them it follows that there is no relief which the district court could have ordered the Commission to grant Rendelman. It cannot grant him parole from a sentence as to which he has already been released, and it cannot grant him parole from a sentence as to which he is not eligible for parole.³ As a result, the district court properly held that Rendelman's petition was moot. *See United States ex rel. Graham v. United States Parole Comm'n*, 732 F.2d 849, 850 (11th Cir. 1984) (holding that application for writ of habeas corpus was moot where "[a] favorable decision on the merits would not entitle [the applicant] to any additional relief," since the "ultimate objective in bringing [the] action was to obtain parole" and the applicant had been released on parole during the pendency of the action); *see also Bailey v. Southerland*, 821 F.2d 277, 278 (5th Cir. 1987) (holding that appeal from denial of habeas relief was moot where "[t]he main thrust of Bailey's petition [was] to be released from his confinement" and "[b]ecause Bailey was released . . . this court [could] no longer provide him with relief"). We therefore **AFFIRM**.

orders my original Parole date reinstated.").

³ Rendelman does not contend that he is entitled to relief from defendant Bill Hedrick, who is the warden at the Federal Correctional Institution at Bastrop, Texas, where Rendelman is no longer incarcerated.