

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8332
Conference Calendar

MARTIN FRANCO, JR.,

Plaintiff-Appellant,

versus

CLAYTON E. EVANS,

Defendant,

RICHARD MOCK,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A 92 CA 574 JN
- - - - -

June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Franco must first pursue state and federal habeas remedies prior to asserting this § 1983 claim because he is attempting to challenge indirectly the legality of his conviction. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). A state prisoner's application for federal habeas relief shall not be granted unless it appears that the applicant has exhausted all available state remedies or that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

there is an absence of state corrective process or the existence of circumstances rendering such process ineffective to protect his rights. 28 U.S.C. § 2254(b).

Franco admits that he has not pursued state habeas remedies. Therefore, the district court's dismissal of his § 1983 complaint, without prejudice, is AFFIRMED.