

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8339
Conference Calendar

JULIAN SCOTT ESPARZA,

Plaintiff-Appellant,

versus

PAROLE PANEL,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CV-63
- - - - -
(October 28, 1993)

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

PER CURIAM:*

Julian Scott Esparza filed a civil rights action, pursuant to 42 U.S.C. § 1983, alleging that the "parole panel" denied him conditional release in violation of his constitutional rights. The district court construed the action as an application for federal writ of habeas corpus and dismissed without prejudice to afford Esparza an opportunity to present his claim to the state courts.

Esparza asserts that he has not filed an application for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

habeas corpus relief. He argues that the district court erred in dismissing his civil rights action for failure to exhaust his claim in state court. Citing Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), he contends that he properly sought injunctive relief under § 1983.

Esparza challenged denials of conditional release on September 6, 1991, and October 23, 1992. Esparza's reliance on Greenholtz is misplaced because Texas parole law does not create an expectancy of release. Creel v. Keene, 928 F.2d 707, 711-12 (5th Cir.), cert. denied, 111 S.Ct. 2809 (1991). Because the 1989 amendments to the Texas parole statute create no expectation of release, there is no due process protection under the Fourteenth Amendment. Id. at 712. Esparza has pleaded no constitutional violation.

Because Esparza alleged no constitutional violation, the district court need not have dismissed for failure to exhaust habeas remedies. "Neither habeas nor civil rights relief can be had . . . absent the allegation by a plaintiff that he has been deprived of some right secured to him by the United States Constitution or laws." Thomas v. Torres, 717 F.2d 248, 249 (5th Cir. 1983), cert. denied, 465 U.S. 1010 (1984).

The judgment of the district court is modified to dismiss the claim with prejudice, and as modified is AFFIRMED.