

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8668
Summary Calendar

JERRY E. EASLEY

Plaintiff-Appellant,

versus

THE STATE OF TEXAS

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Texas
(A-93-CR-21-SS)

(March 18, 1994)

Before GOLDBERG, KING, and GARWOOD, Circuit Judges.

PER CURIAM:*

Arizona obtained from the Governor of Texas an authorization to extradite Jerry E. Easley, an inmate in a Texas prison. With the assistance of court-appointed counsel, Easley challenged his extradition by filing an application for a writ of habeas corpus in a Texas state district court. The state district court denied Easley's application. A state appeals court affirmed the judgment

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of the district court. Easley then filed a petition for discretionary review with the Texas Court of Criminal Appeals; however, that court dismissed the petition as untimely. Contending that the dismissal by the Court of Criminal Appeals violated the Texas Rules of Appellate Procedure and therefore infringed his federal constitutional rights, Easley, now proceeding pro se, attempted to remove his state court proceeding to federal court pursuant to 28 U.S.C. § 1443. The district court dismissed Easley's Petition for Removal pursuant to 28 U.S.C. § 1446(c)(4).¹ Easley appeals.²

Easley contends that this case is removable pursuant to 28 U.S.C. § 1443. That section allows defendants to remove certain civil actions or criminal prosecutions that have been commenced in state courts in order to ensure that federal civil rights are vindicated. It is axiomatic that Easley is not the defendant in the state habeas corpus proceeding that he initiated. Therefore, Easley is not entitled to remove this case under 28 U.S.C. § 1443.

The order of the district court dismissing Easley's Petition of Removal is AFFIRMED.

¹28 U.S.C. § 1446(c) outlines the procedures for removal of criminal prosecutions. Subsection (c)(4) directs district courts to which criminal prosecutions are removed to examine the notice of removal and to summarily remand improperly removed prosecutions. Needless to say, Easley's habeas application is a civil proceeding.

²Although orders remanding a case to the state courts are not ordinarily reviewable on appeal, "an exception is made for an order remanding to state court a case removed, pursuant to 28 U.S.C. § 1443, on the ground of an alleged civil rights violation." State of Texas v. Gulf Water Benefaction Co., 679 F.2d 85, 86 (5th Cir. 1982).