

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9016
Summary Calendar

JOE RAFUS WALKER,

Petitioner-Appellant,

versus

WAYNE SCOTT, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
from the Northern District of Texas
(1:93-CV-0015-C)

(December 22, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

In 1986, appellant Walker pleaded guilty pursuant to a plea bargain to one count each of burglary of a habitation and aggravated assault on a police officer and was sentenced to fifty years confinement in the TDCJ. In this federal habeas petition, Walker alleged violations of due process committed by the TDCJ Division of Pardons and Paroles, which, he asserts, failed to set a tentative parole date for him within 120 days and otherwise to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

comply with the effective amendment of the parole law that established the requirement for parole. He also alleged that the parole division did not provide him with a meaningful statement of the reasons and factual basis for the denial of his release on parole.¹ The district court adopted the recommendation for the magistrate judge and denied relief. Finding no error, we affirm.

To the extent Walker alleges that the amended Texas parole statute, Texas Code Crim. Proc. Ann. art. 42.18 § 8 (Vernon Supp. 1988), has created for prisoners a constitutionally protected liberty interest in parole, he is in error. Creel v. Keene, 928 F.2d 707, 712 (5th Cir.), cert. denied 501 U.S. 1210 (1991). Creel specifically construes the 1989 amendments to the Texas parole law, but it also found "unpersuasive" the petitioner's argument that he had a constitutionally protected liberty interest in parole under the 1987 amendments. Creel, 928 F.2d at 711.

Walker urges us to consider that the statutory provisions work in conjunction with the rules of the Pardons and Paroles Division, specifically §§ 145.1-145.6, to confer on a prisoner an expectation of parole for purposes of due process protection. We have considered this argument and find it wanting. The regulations to which Walker refers state that, "a tentative parole date may be set," and, "the establishment of the tentative parole date may be deferred . . .", § 145.3 and § 145.5 (emphasis added). Although

¹ Walker also contended that he was denied release on parole in retaliation for filing a lawsuit against several employees of the TDCJ. On appeal, he has not briefed or argued the district court's rejection of the claim, and it is therefore waived. Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987).

the word "shall" is used occasionally in the regulations that determine how the Pardons and Paroles Division will go about balancing the factors that are within its discretion to assess, these mandatory words do not remove the essential discretion that the Parole Board maintains. As a result, these rules cannot expand upon the statutory language to create a constitutional expectation of parole.

Finally, Walker asserts that he was not given adequate reasons for the denial of parole. In his state habeas papers, he has attached two letters from the Parole Board denying relief, both of which state multiple reasons for the Board's decisions. A third letter, dated much earlier, informed him that it was too early for the Board to consider parole in his case. Walker objects that these reasons are "boilerplate," but we disagree. Those reasons were perfectly adequate to apprise Walker of the Board's consideration of his case and what he might do to enhance his possibility of parole. See also Gilbertson v. Tex. Board of Pardons and Paroles, 993 F.2d 74 (5th Cir. 1993) (no constitutional requirement for board to give reasons for denial of parole).

For these reasons, the judgement of the district court is **AFFIRMED.**