

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10107  
Conference Calendar

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JOHN OTIS VINEYARD,

Plaintiff-Appellant,

versus

JACK KYLE, Director  
TDCJ Paroles Division,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:94-CV-03-C  
- - - - -

(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

John Otis Vineyard alleges that the district court erroneously dismissed his civil rights complaint filed under 42 U.S.C. § 1983 as frivolous under U.S.C. § 1915(d). He states that he has exhausted state habeas remedies, although it is unclear whether the issues raised in state habeas correspond to the issues currently on appeal.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

This Court requires a plaintiff such as Vineyard, who attempts to challenge indirectly the legality of his confinement pursuant to a parole revocation, to pursue state and federal habeas remedies prior to asserting a § 1983 claim. Jackson v. Torres, 720 F.2d 877, 879 & n.5 (5th Cir. 1983); see Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). Only after exhaustion of both state and federal habeas remedies will Vineyard be allowed to proceed as a civil rights petitioner. Jackson, 720 F.2d at 879.

Furthermore, a prisoner must first exhaust state habeas remedies if he challenges a single hearing as being constitutionally defective. Serio, 821 F.2d at 1118. If a prisoner first brings a § 1983 action when a habeas action is a pre-requisite, the district court may dismiss without prejudice or stay the case to suspend the running of the statute of limitations until habeas remedies are exhausted. Id. at 1119.

On appeal, Vineyard attempts to redefine his allegations to challenge, in a general sense, the constitutionality of the rules, customs, and procedures used by the Texas Board of Pardons and Parole (Board) regarding parole revocation so as to render his claims appropriate for § 1983 relief at this time. See Spina v. Aaron, 821 F.2d 1126, 1128 (5th Cir. 1987). However, it is obvious from the record that his § 1983 complaint challenged indirectly the legality of his revocation and confinement. The general attack on the Board's rules, customs, and procedures was not raised in the district court and, therefore, is not properly

before this Court. Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985).

To the extent that Vineyard's allegations that the Board revokes cases without reviewing each case properly could possibly sound as a § 1983 claim, that claim is inextricably intertwined with Vineyard's other claims and is not so factually distinct as to readily permit the district court to analyze it separately. See Serio, 821 F.2d at 1119.

Although the district court correctly concluded that exhaustion was required, it improperly stated that the case was frivolous and improperly dismissed under § 1915(d). The dismissal is more properly one for failure to exhaust habeas remedies. Noting that the district court's § 1915(d) dismissal was without prejudice, see Graves v. Hampton, 1 F.3d 315, 318-19 (5th Cir. 1993), we affirm, but on an alternative ground.

IT IS FURTHER ORDERED that the statute of limitations is deemed tolled while Vineyard pursues habeas relief. See Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992).

AFFIRMED.