

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10116
Summary Calendar

ANTHONY EUGENE GILL,

Petitioner-Appellant,

versus

STATE OF TEXAS, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(4:93-CV-391-Y)

(June 7, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Anthony Eugene Gill appeals from the denial of habeas relief.

We **AFFIRM**.

I.

On July 30, 1992, Gill was indicted for committing a robbery on June 7, 1992, while on parole. The Texas Board of Pardons and Paroles conducted a hearing and revoked his parole, concluding, *inter alia*, that the robbery violated the conditions of his release.

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

In June 1993, Gill filed for habeas relief in federal court, pursuant to 28 U.S.C. § 2241(c)(3),² seeking to enjoin the state prosecution for the June 1992 robbery. He claimed that collateral estoppel and the double jeopardy clause of the Fifth Amendment barred the State from prosecuting him, because the issues which the State intended to prove in the robbery case had been determined previously in the parole revocation proceeding. On July 12, 1993, Gill pleaded guilty to the robbery. That November, in the federal habeas proceeding, he filed a motion to void the conviction.

The magistrate judge determined that Gill's guilty plea mooted his request to enjoin the State. However, out of an "abundance of caution", the magistrate judge addressed the merits, and recommended that relief be denied because the double jeopardy clause does not apply to parole revocation proceedings. The district court adopted the recommendation, but granted Gill's motion for a certificate of probable cause.

II.

A.

"Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome". **Powell v. McCormack**, 395 U.S. 486, 496 [89 S. Ct. 1944] (1969). Although Gill originally sought to enjoin the state prosecution, he retained, following his guilty plea, a legally

² "Pre-trial petitions ... are properly brought under 28 U.S.C. § 2241, which applies to persons in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him". **Dickerson v. Louisiana**, 816 F.2d 220, 224 (5th Cir.), cert. denied, 484 U.S. 956 (1987).

cognizable interest in the outcome of the habeas proceeding, because the constitutionality of his conviction was at issue. Therefore, this case was not mooted by entry of judgment in the state criminal proceeding.

B.

Gill's contention that the State was collaterally estopped from prosecuting him for the June 1992 robbery is meritless. The doctrine of collateral estoppel does not have constitutional dimensions independent of the double jeopardy clause. **Showery v. Samaniego**, 814 F.2d 200, 204 (5th Cir. 1987). And, because the purpose of parole revocation proceedings "is to determine whether a parolee ... has violated the conditions of his parole" and not to prosecute or punish a criminal defendant for violation of a criminal law, our court has held that the double jeopardy clause does not apply to such proceedings. **United States v. Whitney**, 649 F.2d 296, 298 (5th Cir. 1981).³ Accordingly, the fact that Gill's commission of the June 1992 robbery was part of the basis for the revocation of his parole did not bar the State from prosecuting him for the robbery.

C.

Gill contends also that the district court was bound to give full faith and credit to Texas law, which provides that double jeopardy attaches in parole revocation proceedings. See **Ex parte**

³ See **Morrissey v. Brewer**, 408 U.S. 471, 480 (1972) ("revocation of parole is not part of a criminal prosecution"; it deprives an individual "only of the conditional liberty properly dependent on observance of special parole restrictions").

Tarver, 725 S.W.2d 195, 199-200 (Tex. Crim. App. 1986) (collateral estoppel bars subsequent prosecution of an offense after the State has *failed* to prove identical allegations in a probation revocation hearing).

Because this issue was raised for the first time in Gill's objections to the magistrate judge's recommendation, we need not address it. See **United States v. Armstrong**, 951 F.2d 626, 630 (5th Cir. 1992).⁴

III.

For the foregoing reasons, the denial of habeas relief is

AFFIRMED.

⁴ In any event, Gill's contention is meritless, because the district court's judgment does not fail to give full faith and credit to the State Board of Pardons and Paroles' finding that Gill's parole should be revoked because he committed a robbery. Although it is "within [the **Tarver**] court's purview to extend state constitutional guarantees beyond those afforded by the federal Constitution", we are not bound by the that court's interpretation of federal constitutional law. See **Showery**, 814 F.2d at 204.