

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10201  
Conference Calendar

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KENNETH WAYNE BROOKS,

Plaintiff-Appellant,

versus

STATE CRIMINAL DISTRICT  
COURT OF 363RD COURT and  
COUNTY CLERK OF LEW STERRETT,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-2393-X  
- - - - -  
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

In a complaint filed pursuant to 42 U.S.C. § 1983, Kenneth Wayne Brooks challenged the sentence he is currently serving and argued that he should not have been denied parole. A § 1983 action is the appropriate remedy for recovering damages for mistreatment or for illegal administrative procedures that violate constitutional rights. See Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). The writ of habeas corpus is the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appropriate federal remedy for a state prisoner challenging the fact of confinement. Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). To determine which remedy a prisoner should pursue, a court must look beyond the relief sought to determine whether the claim, if proved, "would factually undermine or conflict with the validity of the state court conviction which resulted in the prisoner's confinement." Fleming, 651 F.2d at 373. If the basis of the claim goes to the constitutionality of the conviction, "the exclusive remedy is habeas corpus relief with the comity inspired prerequisite of exhaustion of state remedies." Id.

Brooks challenges the fact of his confinement, and, specifically, the court proceedings that led to his confinement. If Brooks's sentence was enhanced because his identity was confused with another man by the same name, he is incarcerated in violation of his constitutional rights and must pursue state and federal habeas corpus remedies before asserting a § 1983 claim. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1118-19 (5th Cir. 1987). Neither the record or Brooks's brief indicates that he has exhausted his state habeas remedies, a prerequisite to federal habeas relief. See 28 U.S.C. § 2254(b).

The judgment of the district court is AFFIRMED.