

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10326  
Conference Calendar

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ARTHUR JAMES RAUCHLE, JR.,

Petitioner-Appellant,

versus

KEITH BARTON, Judge,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:94-CV-18-C  
- - - - -  
(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Arthur James Rauchle, Jr., alleges that the district court erred in dismissing his federal habeas petition for failure to exhaust state habeas remedies. We AFFIRM.

There is no statutory requirement that a petitioner seeking pretrial federal habeas relief exhaust state habeas remedies. See 28 U.S.C. § 2241(c)(3). However, there is a "judicially crafted" exhaustion requirement based on "federalism grounds in order to protect the state courts' opportunity to confront and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

resolve initially any constitutional issues arising within their jurisdictions as well as to limit federal interference in the state adjudicatory process." Dickerson v. Louisiana, 816 F.2d 220, 225 (5th Cir.), cert. denied, 484 U.S. 956 (1987).

The exhaustion doctrine requires a habeas petitioner to present his claims to the state's highest court in a procedural posture in which the claims ordinarily will be considered on their merits. Castille v. Peoples, 489 U.S. 346, 351, 109 S. Ct. 1056, 103 L. Ed. 2d 380 (1989); Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988). As noted by the Texas Court of Appeals, Rauchle's attempt to challenge the Abilene Municipal Court's denial of his motion to quash via a habeas application was improper because in Texas, habeas relief is generally not available to test the sufficiency of a charging instrument prior to trial. Ex parte Guerrero, 811 S.W.2d 726, 727 n.3 (Tex. Ct. App. 1991).

Rauchle has failed to exhaust his state remedies, and thus the district court's dismissal of his federal habeas petition was proper.

AFFIRMED.