

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20354
Conference Calendar

GEORGE E. TRAHAN,

Plaintiff-Appellant,

versus

JOHNNY KLEVENHAGEN, Sheriff,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-93-2031
- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

George E. Trahan appeals the dismissal of his federal civil rights complaint as frivolous. A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss such a complaint as frivolous "where it lacks an arguable basis either in law or in fact." *Denton v. Hernandez*, ___ U.S. ___, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(1992)(quoting *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989)).

In his complaint, Trahan challenged Texas's parole procedures. He sought immediate release. A prisoner seeking immediate release must seek relief initially through habeas corpus proceedings. *Johnson v. Pfeiffer*, 821 F.2d 1120, 1123 (5th Cir. 1987). However, a district court may dismiss a civil rights complaint seeking immediate release on the merits when that complaint fails to allege a constitutional violation. *Irving v. Thigpen*, 732 F.2d 1215, 1216 (5th Cir. 1984). Texas prisoners have no constitutionally protected right to release on parole. *Creel v. Keene*, 928 F.2d 707, 712 (5th Cir.), cert. denied, 501 U.S. 1210 (1991). Inasmuch as Trahan seeks immediate release on parole, his claim regarding Texas parole procedures is frivolous.

A prisoner has no inherent constitutional right regarding transfer from one prison to another. *Olim v. Wakinekona*, 461 U.S. 238, 244-45, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983). A state, however, may create "a protected liberty interest by placing substantive limitations on official discretion. An inmate must show `that particularized standards or criteria guide the State's decisionmakers.'" *Id.* at 249 (citation omitted). Texas statutes do not provide any particular prisoner with a constitutionally protected interest in being transferred from a county jail to a TDCJ facility. Trahan's contention that he has such an interest therefore is without basis in law.

Trahan raises for the first time on appeal his contention

that the county jail is in violation of the standards governing conditions at the jail. We need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991). Resolution of Trahan's contention would require us to make factual determinations. We will not consider this issue.

Nor need we consider Trahan's contentions regarding overcrowding, inadequate medical care, and cruel and unusual punishment generally. In his amended complaint, Trahan contended that the alleged agreement between TDCJ and the Harris County Jail is illegal and that the jail violated *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115, *amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Remedial orders, per se, do not create substantive constitutional rights. *Green v. McKaskle*, 788 F.2d 1116, 1123 (5th Cir. 1986). The district court did not abuse its discretion by dismissing Trahan's case without exploring whether Trahan wished to allege violation of any particular constitutional rights protected by *Ruiz*.

AFFIRMED.