

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30346
Conference Calendar

RICKY LANE,

Plaintiff-Appellant,

versus

FIRST CIRCUIT COURT OF APPEAL,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-93-827-B
- - - - -

(January 27, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Ricky Lane appeals the district court's denial of federal habeas corpus relief without prejudice for failure to exhaust state remedies. Lane contends that the district court erred in declining to address the merits of his claims without holding an evidentiary hearing to determine whether the state court's delay in ruling on his state application for postconviction relief was reasonable.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Federal courts may not grant habeas corpus relief to a state petitioner until the petitioner has exhausted state remedies unless there are exceptional circumstances. Deters v. Collins, 985 F.2d 789, 793-95 (5th Cir. 1993). "[T]he exhaustion doctrine will not be applied when the state system inordinately and unjustifiably delays review of a petitioner's claims so as to impinge upon his due process rights." Id. at 795 (citing inter alia Shelton v. Heard, 696 F.2d 1127, 1128-29 (5th Cir. 1983)).

Lane filed his state application for postconviction relief on October 1, 1991. When the state trial court delayed in ruling on his application, the Court of Appeal ordered the trial court to dispose of the application. The trial court denied relief on August 12, 1993, and on August 23, 1993, Lane appealed to the Louisiana Court of Appeal. On September 27, 1993, he sought federal habeas relief because the Court of Appeal had not rendered an opinion and it had been approximately 24 months since he had filed his original state application for postconviction relief. On April 28, 1994, the district court denied relief because Lane had not exhausted state remedies.

At the time the district court rendered its decision, Lane's appeal had been pending in the Court of Appeal for approximately eight months. The district court did not err in declining to excuse Lane from compliance with the exhaustion requirement because the delay was not of such magnitude as to impinge on Lane's due process rights. As of this date, Lane has not informed this Court that there has been a disposition in the

Court of Appeal; therefore, it is assumed that the case is still pending and that the claims have not been exhausted.

On appeal, Lane does not address the district court's denial of writ of mandamus; therefore, that issue is deemed abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Because of the recommended disposition, we do not address Lane's remaining claims. Lane's motion to supplement the record is GRANTED.

AFFIRMED.