

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-41050  
Conference Calendar

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JUDE B. SAUCIER,

Petitioner-Appellant,

versus

WARDEN, CALCASIEU CORRECTIONAL  
CENTER,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 94-CV-1337  
- - - - -

(January 27, 1995)

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

PER CURIAM:\*

Jude B. Saucier requests this Court to issue a certificate of probable cause (CPC) and appoint appellate counsel. He contends, in connection with his federal habeas petition, that the district court should have granted injunctive relief because La. Rev. Stat. Ann. 15:571.5 is unconstitutional.

Saucier's habeas petition is more properly construed as a 28 U.S.C. § 2241 petition, not a 28 U.S.C. § 2254 petition. See Dickerson v. Louisiana, 816 F.2d 220, 224 (5th Cir.), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 484 U.S. 956 (1987). Saucier is attacking a restraint on his liberty, a parole-hold detainer, caused, not by documents issued by a state court, but by Louisiana prison officials. See Birdwell v. Skeen, 983 F.2d 1332, 1335 n.5 (5th Cir. 1993) (documents such as detainers issued by a criminal justice agency are not documents issued by a state court). Thus, a CPC is unnecessary for the appeal because "the detention complained of [does not] arise[] out of process issued by a State court." Fed. R. App. P. 22(b); 28 U.S.C. § 2253. Saucier's motion for a CPC is DENIED as unnecessary.

The district court denied injunctive relief\*\* because it found the statutory authority underpinning Saucier's confinement to be proper. The district court should not have reached the merits of Saucier's claims because he admits he has not exhausted state habeas remedies. See Wilson v. Foti, 832 F.2d 891, 894 (5th Cir. 1987). However, we AFFIRM the district court's denial of injunctive relief on alternative grounds. See Hanchey v. Energas Co., 925 F.2d 96, 97 (5th Cir. 1990).

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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\*\* Although Saucier denominated his pleading as a request for a temporary restraining order (TRO) and/or preliminary injunction, it is clear that he seeks a preliminary injunction because he seeks relief that goes to the merits of the underlying action which, if granted, would exceed the ten-day durational limit of a TRO. Fed. R. Civ. P. 65(b).

resolve initially any constitutional issues arising within their jurisdictions as well as to limit federal interference in the state adjudicatory process." Dickerson, 816 F.2d at 225.

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. 1982). Saucier admits he has not done this.

Saucier has also filed a motion for the appointment of appellate counsel. Although there is no constitutional right to the appointment of counsel in habeas actions, this Court may appoint counsel in "exceptional circumstances." Santana v. Chandler, 961 F.2d 514, 515-16 (5th Cir. 1992). The Court may appoint counsel for financially eligible individuals if the interests of justice so required. Id.; see also Schwander v. Blackburn, 750 F.2d 494, 502 (5th Cir. 1985).

Although Saucier is proceeding in forma pauperis, the interests of justice do not require the appointment of appellate counsel. Saucier has demonstrated that he is capable of representing himself by filing competent pleadings and a brief which states his issues and arguments. The case does not present exceptional circumstances warranting the appointment of counsel. Saucier's motion is DENIED.

CPC DENIED as unnecessary; JUDGMENT AFFIRMED; appointment of appellate counsel DENIED.