

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50013

Summary Calendar

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PEDRO MUNIZ, JR.,  
a/k/a Pedro Villarreal Muniz

Petitioner-Appellant,

v.

U.S. PAROLE COMMISSION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
(A-93-CV-246)

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(June 24, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I.

Pedro Muniz, Jr. filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the validity of a parole violator warrant issued by the United States Parole Commission (Commission). The Commission filed a motion to dismiss or,

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

alternatively, a motion for summary judgment. A magistrate judge filed a report and recommendation in which he recommended that the district court grant the Commission's motion for summary judgment. In his report, the magistrate judge determined that Muniz's claim that the Commission issued a second parole violator warrant relating to the violation of his parole in 1988 was without merit. The district court adopted the magistrate's recommendation and entered judgment for the Commission. Muniz appeals.

A prisoner challenging a Parole Commission decision is required to exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241. Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). Exhaustion requires a prisoner to file an appeal of the Commission's decision with the National Appeals Board. Id. The Board is not required to rule on the prisoner's claim; however, the Board must at least be given the opportunity to review the Commission's decision. Id.

In the instant case, it does not appear that Muniz has exhausted his administrative remedies even though the Commission's order advised him that he had the right to do so. Although the fact that Muniz took no administrative appeal from the Commission's decision was noted in the Commission's memorandum in support of its motion to dismiss, no argument was advanced below on the subject and Muniz has not been given the opportunity to show that he has exhausted his administrative remedies or that there is an exception to exhaustion. See id.

(noting exceptions to the exhaustion requirement apply in extraordinary circumstances). Because the issue of exhaustion of administrative remedies was not presented below, we vacate the district court's judgment and remand the case with instructions to consider whether Muniz has exhausted his administrative remedies.

II.

For the foregoing reasons, we VACATE the judgment of the district court and REMAND the case to the district court to consider whether Muniz has exhausted his administrative remedies.