IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50224
Summary Calendar

SCOTT LEWIS RENDELMAN,

Petitioner-Appellant,

VERSUS

WILLIAM J. JONES, JR.,
United States Marshal,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(A-94-CV-149)

(July 8, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Scott Rendelman appeals the denial of his petition for recomputation of sentence filed pursuant to 28 U.S.C. § 2241. Finding no reversible error, we affirm.

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[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Rendelman is incarcerated at the Hays County Law Enforcement Center in San Marcos, Texas. He was convicted of mailing threatening communications and sentenced to forty-two months' imprisonment beginning May 2, 1991, by a federal court in Maryland. Rendelman filed the instant petition, arguing that his sentence should be recomputed to begin on June 2, 1991, the date he was allegedly supposed to have been released on parole from a sentence imposed in 1988, instead of on November 23, 1992, the date he was released from his 1988 sentence to begin serving his 1991 sentence. In sum, Rendelman asserts that, had his due process rights not been violated regarding parole from his 1988 sentence, he could have begun serving the 1991 sentence sooner.

Rendelman challenged the denial of parole from his 1988 sentence in a prior application for federal writ of habeas corpus, No. A-92-CA-650JN, alleging that the United States Parole Commission violated his right to due process by failing to hold a timely hearing regarding rescission of his parole date and by failing to take action on the rescission once a hearing was scheduled, with the result that he was denied the parole to which he was entitled. The district court denied relief on the ground, inter alia, that Rendelman's petition had been rendered moot by his release from his 1988 sentence. This court affirmed.

Applying rule 9(b) of the Rules Governing Section 2254 Cases, as well as 28 U.S.C. § 2244(a), the magistrate judge determined that Rendelman's claims had previously been submitted to and denied

and that, therefore, his petition should be dismissed for abuse of the writ. Rendelman filed objections to the recommendation. The district court adopted the report and recommendation of the magistrate judge and dismissed Rendelman's petition.

II.

Rendelman argues that the "abuse of the writ doctrine" cannot be applied to his case because a petitioner abuses the writ when he deliberately withholds one or more grounds for relief from his first petition. He states further that the doctrine was developed to avoid endless attacks on the same judgment of conviction and that he is not attacking the same judgment of conviction (the 1988 sentence) but is attacking his 1991 forty-two-month sentence.

Lastly, Rendelman asserts that the doctrine of res judicata should not apply to his case because (1) habeas corpus petitions are exempt from the doctrine (citing McCleskey v. Zant, 499 U.S. 467 (1991)) and (2) res judicata applies when an issue previously presented to a court of competent jurisdiction was denied on its merits. Id. Rendelman argues that the issue he raises in the instant petition could not have been decided on its merits by a court of competent jurisdiction because the district court determined that it lacked jurisdiction to decide the issue raised in his first petition (because it was moot). Id. Rendelman goes on correctly to state, however, that the district court did discuss the merits of his petition. Id.

Rendelman's argument that res judicata should not apply is

inapposite, as 28 U.S.C. § 2244(a) is dispositive of the issue he raises on appeal.[1] Section 2244(a) provides,

> No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not theretofore presented and determined, and the judge of court is satisfied that the ends of justice will not be served by such inquiry.

Although Rendelman asserts that he is raising a new ground for relief in the instant petition because he is contesting the computation of his 1991 sentence, the fact remains that his 1991 sentence cannot be recomputed without challenging the denial of parole from his 1988 sentence, the subject of his prior petition. The legality of Rendelman's 1988 sentence was determined by the district court after he filed his first habeas petition, and that court determined that the Parole Commission had no jurisdiction over Rendelman. We affirmed that decision. Rendelman presents no new ground in the instant petition, and the ends of justice will not be served by reviewing the denial of his successive petition.

AFFIRMED.

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[1] The district court improperly looked to rule 9(b) in dismissing Rendelman's petition inasmuch as the rule applies to petitions filed pursuant to 28 U.S.C. § 2254 and Rendelman's petition was brought pursuant to § 2241.