

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50270
Conference Calendar

WALLACE LEE SIMS,

Plaintiff-Appellant,

versus

JACK KYLE, Chairman,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CA-414
- - - - -
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Wallace Lee Sims, a Texas prisoner, commenced this 42 U.S.C. § 1983 action against Jack Kyle, the Chairman of the Texas Board of Pardons and Parole. Sims alleged that the Parole Board practice of allowing a revocation to proceed while the criminal charge that is the basis for the revocation is still under investigation violates due process and that his parole was revoked pursuant to this custom and practice. He sought unspecified injunctive relief. Construing the complaint as a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

habeas petition, the district court dismissed it without prejudice for failure to exhaust state habeas remedies.

In Sims v. Smith, No. 93-8772 (5th Cir. July 6, 1994) (unpublished), we rejected Sims's claim that due process requires that a parole revocation hearing based on the same conduct which underlies a criminal charge must be delayed until the criminal charge is resolved. Our decision in Sims's prior appeal controls disposition of this appeal, as Sims is advancing the same due process challenge to the revocation of his parole. We therefore affirm the dismissal of Sims's complaint.

AFFIRMED.