

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50409  
Conference Calendar

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EDDIE JAMES ROBERSON,

Plaintiff-Appellant,

versus

BOARD OF PARDONS & PAROLES, and  
DANIEL DOWNS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-93-CV-613  
- - - - -  
(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Eddie James Roberson, an inmate of the Texas Department of Criminal Justice, filed this action under 42 U.S.C. § 1983 against the Texas Board of Pardons and Paroles, and Daniel Downs, a member of the Board, alleging a violation of his constitutional rights regarding the revocation of his parole in June of 1992. The district court dismissed his complaint with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Roberson argues on appeal that he is illegally confined in prison and that he is entitled to damages because his parole was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

revoked on the technical violation of opening a checking account. He seeks to be granted parole immediately. He argues that he did exhaust his state remedies.

This Court will affirm a dismissal under Fed. R. Civ. P. 12(b)(6) if it appears to a certainty that a court could grant no relief under any set of facts provable in support of plaintiff's allegations, or if the allegations, accepted as true, do not present a claim upon which relief is legally justified. Walter v. Torres, 917 F.2d 1379, 1383 (5th Cir. 1990).

The Texas Board of Pardons and Paroles was made a division of the Texas Department of Criminal Justice in 1989. Alberti v. Sheriff of Harris County, Texas, 937 F.2d 984, 1003 (5th Cir. 1991), cert. denied, 112 S. Ct. 1994 (1992). Insofar as Roberson seeks monetary damages, the Texas Department of Criminal Justice is entitled to immunity under the Eleventh Amendment. Loya v. Texas Dept. of Corrections, 878 F.2d 860, 861-62 (5th Cir. 1989). Likewise, Daniel Downs, as a member of the Texas Board of Pardons and Paroles, is entitled to absolute immunity with regard to any decision to revoke Roberson's parole. Walter, 917 F.2d at 1383-85.

Insofar as he seeks immediate or earlier release on parole, his claims are not actionable under § 1983 because the exclusive federal judicial route to release from custody is habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 488-90, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973).

AFFIRMED.