IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50774
Conference Calendar

GARY LEE HICKS,

Petitioner-Appellant,

versus

EDMUNDO M. ZARAGOZA, Justice
of the Peace Pct. 5, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-94-CV-698
- - - - - - - - - -
June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

"In order to be eligible for habeas relief, a petitioner . . . must have exhausted his available state remedies." Dickerson v. Louisiana, 816 F.2d 220, 224 (5th Cir.), cert. denied, 484 U.S. 956 (1987). Although exhaustion is not expressly mandated by § 2241,

> a body of case law has developed holding that although section 2241 establishes jurisdiction in the federal courts to consider pre-trial habeas corpus petitions, federal courts should abstain from the exercise of that

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

> jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state court or by other state procedures available to the petitioner.

Id. "The exhaustion doctrine of section 2241(c)(3) was judicially crafted on federalism grounds in order to protect the state courts' opportunity to confront and resolve initially any constitutional issues arising within their jurisdictions as well as to limit federal interference in the state adjudicatory process." Id. (citing Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489-92 (1973)). Hicks argues that the exhaustion requirement constitutes an unconstitutional abrogation of the federal government's duty to protect Hicks from infringements upon his constitutional rights. Dickerson stands for the opposite proposition. This traffic violations case is not an appropriate vehicle for revisiting the theoretical underpinnings of the exhaustion doctrine. The appeal is frivolous and is DISMISSED.

Hicks is warned that he will be sanctioned if he files frivolous appeals in the future. See Smith v. McCleod, 946 F.2d 417, 418 (5th Cir. 1991); Jackson v. Carpenter, 921 F.2d 68, 69 (5th Cir. 1991).

DISMISSED.