

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60011  
Conference Calendar

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ANDREW STATEN,

Plaintiff-Appellant,

versus

JACK KYLE, Director,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 93-CV-584  
- - - - -  
(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). We review the dismissal for abuse of discretion. Id., 112 S.Ct. at 1734.

Staten's argument concerning the restoration of good time credits was not raised in the district court. Generally, this Court does not consider issues raised for the first time on

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appeal. Murray v. Anthony J. Bertucci Constr. Co., Inc., 958 F.2d 127, 128 (5th Cir.), cert. denied, 113 S.Ct. 190 (1992). Because the district court dismissed without prejudice, no manifest injustice will result by our refusal to address the issue. See id.

Staten argues that the denial of an annual reconsideration-of-parole hearing violated the federal and state constitutions. To recover under 42 U.S.C. § 1983, a plaintiff must prove that he was deprived of a federal right. See Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). Whether a prisoner has a constitutional right in parole-release matters is determined by state statute. See Gilbertson v. Texas Bd. of Pardons & Paroles, 993 F.2d 74, 75 (5th Cir. 1993). The Texas statute does not create such a constitutionally guaranteed right to parole or to a parole hearing. See id.; TEX. CODE CRIM. PROC. ANN. art. 42.18 § 8(a) & (f)(5) (West Supp. 1994).

As for Staten's argument that the Texas law requiring an inmate to be paroled to the county of conviction is violative of the Constitution, Texas law gives the parole board discretion to determine the county of release. TEX. CODE CRIM. PROC. ANN. art. 42.18 § 8A (West Supp. 1994).

Staten's claims lack arguable bases in law. See Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). Therefore, the district court did not abuse its discretion in dismissing without prejudice the complaint as frivolous. See Denton, 112 S.Ct. at 1734.

AFFIRMED.