

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60266  
Conference Calendar

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FLOYD LEE KIDD,

Petitioner-Appellant,

versus

THE UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-C-93-58  
- - - - -

(January 25, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit  
Judges.

PER CURIAM:\*

IT IS ORDERED that Floyd Lee Kidd's motion for a certificate  
of probable cause is DENIED as unnecessary. See 28 U.S.C.  
§ 2253.

Construing the said motion as one for leave to proceed on  
appeal in forma pauperis, IT IS ORDERED that the motion is  
DENIED, because the appeal lacks arguable merit and is therefore  
frivolous. In ruling on the motion, this Court has examined the  
motion and Kidd's brief in the light most favorable to him and

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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that this opinion should not be published.

has reviewed the record for any basis to support granting him relief on appeal. Because we have concluded on this review that the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

Kidd seeks habeas corpus relief relative to a 20-year federal sentence which he received in 1955. He is serving the unexpired portion of this sentence, his parole having been revoked as a result of his 1969 convictions of several state criminal offenses. Kidd contends that he is entitled to release from confinement on grounds that he received a Youth Corrections Act (YCA) sentence in 1955, rather than a regular adult sentence.

In 1955 it was not legally possible for Kidd to be sentenced under the YCA, because he was then 22 years old. In 1955, only persons under the age of 22 at the time of conviction were eligible for a YCA sentence. 18 U.S.C. § 5006(e)(1950). The YCA was amended, effective in August 1958, to give courts the discretion to sentence persons who were at least 22 but under 26 years old ("young adult offenders") under the YCA. The court had to make a finding that there was reasonable ground to believe that the offender would benefit from such treatment. 18 U.S.C. § 4209 (1958); see 3 Wright, Fed. Prac. & Proc. § 531 at 153-54 (2d ed. 1982).

There is nothing in the 1955 judgment and commitment which would suggest that Kidd received other than a regular adult sentence. The fact that Youth Division members of the Parole Board took action in Kidd's case does not necessarily mean that they considered him to have been sentenced under the YCA. See

Wright v. Blackwell, 402 F.2d 489, 491 (5th Cir. 1968). They had no authority to change Kidd's regular adult sentence, imposed by the district court, to a YCA sentence.

IT IS FURTHER ORDERED that Kidd's motions for the appointment of counsel and to supplement the record are DENIED.

APPEAL DISMISSED.