

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-60361  
(Summary Calendar)

---

IN RE: PHILLIP STOKES,

Plaintiff-Appellant,

---

Appeal from the United States District Court  
for the Southern District of Mississippi  
(3:94-MC-20)

---

(August 15, 1994)

Before JOLLY, WIENER and STEWART, Circuit Judges.

PER CURIAM:\*

Phillip Stokes, currently a prisoner of the State of Mississippi, filed the instant petition under 28 U.S.C. § 1651, seeking to compel the Mississippi Supreme Court to rule on his application for leave to pursue post-conviction relief in the trial court of his conviction. His complaint alleged that his conviction for capital murder was affirmed by the Mississippi Supreme Court,

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and that his petition for a writ of certiorari from the United States Supreme Court was denied. His subsequent petition for writ of habeas corpus in federal court was, according to Stokes, dismissed for failure to exhaust his state remedies. He had also filed an application with the Mississippi Supreme Court for leave to pursue post-conviction relief in the trial court. After the district court denied Stokes' petition and dismissed it with prejudice, he timely appealed.

Stokes states that the district court violated his due process and equal protection rights by denying and dismissing his petition seeking mandamus relief. He does not, however, present any substantive argument regarding either his due process or equal protection rights. Rather, Stokes' sole purpose in filing the instant petition, and in pursuing this appeal, is to accelerate the Mississippi Supreme Court's consideration of his application to file a petition for post-conviction relief. Unfortunately for Stokes, though, "a federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought." Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973).

Stokes cites Russell v. Knight, 448 F.2d 96 (5th Cir. 1973), for the proposition that his petition for mandamus could and should be liberally construed as a petition for writ of habeas corpus. In Russell, however, the petitioner had been denied his right to appeal his state conviction. We held that habeas corpus relief was the proper vehicle for remedying an unconstitutional denial of

one's right to appeal. Russell, 488 F.2d at 97.

In the instant case, on the other hand, Stokes has not been denied his right to appeal, or an opportunity to pursue post-conviction relief, either state or federal. Such review is currently pending in the state courts. As the district court noted, Stokes' only goal in the instant case is to have the federal courts compel the state courts to speed up the state review process so that he may get on with his federal habeas corpus case. As mandamus is the only relief sought by Stokes in the instant petition, and as federal courts lack the authority to provide this relief, see Moya, 474 F.2d at 1276, the district court's dismissal of Stokes' petition is

AFFIRMED.