

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60844
Summary Calendar

EUGENE MOORE,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,
Mississippi State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court
For the Northern District of Mississippi
(1:94-CV-66-S-D)

(July 7, 1995)

Before POLITZ, Chief Judge, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Eugene Moore, an inmate in the Mississippi Department of Corrections, appeals the denial of his habeas corpus petition challenging the revocation of his parole. We affirm.

Background

In 1966 Moore pled guilty to a charge of murder and was

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

sentenced to life imprisonment. In March 1977 Moore was paroled, but that parole was revoked several months later after he was arrested and charged with assault with intent to rape. Moore filed an unsuccessful habeas petition in state court and then filed the instant pleading, contending that his parole was improperly revoked because he was never convicted of the rape charge. The district court, construing the petition as filed under 28 U.S.C. § 2254, adopted the magistrate judge's findings and recommendation that the petition be denied. Moore timely appealed.

Analysis

We review the district court's factual findings under the clearly erroneous standard and review questions of law *de novo*.¹ Moore's habeas petition must be construed under 28 U.S.C. § 2241.² Doing so, and finding ample evidence in the record which supports the revocation of parole, we conclude that the dismissal of Moore's habeas petition was proper. Conviction of a criminal charge is not a constitutional prerequisite to the revocation of parole.³ We inquire only whether there is some evidence to support the revocation decision.⁴ We find such. Further, we are not persuaded

¹**Dison v. Whitley**, 20 F.3d 185 (5th Cir. 1994).

²See **United States v. Tubwell**, 37 F.3d 175 (5th Cir. 1994); **Dickerson v. State of La.**, 816 F.2d 220 (5th Cir.), cert. denied, 484 U.S. 956 (1987).

³**Amaya v. Beto**, 424 F.2d 363 (5th Cir. 1970); **Wallace v. State**, 607 So.2d 1184 (Miss. 1992) (explaining revocation on more likely than not standard).

⁴**Villarreal v. United States Parole Comm'n**, 985 F.2d 835 (5th Cir. 1993) (affirming U.S. Parole Commission revocation of parole).

that the district court improperly denied Moore an evidentiary hearing in light of the adequacy of the record.⁵ Finally, concluding that no manifest injustice will result, we decline to address allegations of error which Moore did not raise before the district court.⁶

The judgment of the district court is AFFIRMED.

⁵**Wilcher v. Hargett**, 978 F.2d 872 (5th Cir. 1992), cert. denied, 114 S.Ct. 96 (1993).

⁶**Varnado v. Lynaugh**, 920 F.2d 320 (5th Cir. 1991).