

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30596
Conference Calendar

LARRY DONNELL NICHOLS,

Petitioner-Appellant,

versus

RANDY PINION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-95-1232-E
- - - - -

(October 18, 1995)

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

PER CURIAM:*

Larry Donnell Nichols has appealed from the district court's dismissal without prejudice of his habeas corpus petition for failure to exhaust his state remedies. Because his appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

Nichols asserts that the law does not require him to exhaust his state remedies because he was arrested and has been continued in custody in violation of his constitutional rights. He cites

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

28 U.S.C. § 2254(a), (c), and (d), but not § 2254(b), which provides that a state prisoner must exhaust his available state remedies before he can obtain federal habeas relief.

"[A] state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus." Picard v. Connor, 404 U.S. 270, 275 (1971). Louisiana law authorizes applications for postconviction relief by prisoners, such as Nichols, who no longer can take a direct appeal relative to their convictions or sentences. La. Code Crim. Proc. Ann. arts. 924, 924.1 (West 1984). Nichols has not attempted to utilize this remedy relative to any of his federal habeas claims, and he has not stated any valid reason for not having done so. We caution Nichols that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Nichols is further cautioned to review all pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED; Nichols's applications for leave to proceed in forma pauperis, appointment of counsel, the state trial record, and personal recognizance release are DENIED.