

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50581
Conference Calendar

DARNELL JOHNSON,

Petitioner-Appellant,

versus

WAYNE SCOTT, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-95-CV-155
- - - - -

December 19, 1995

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Darnell Johnson has filed with this court motions for a certificate of probable cause (CPC) and to proceed in forma pauperis (IFP) on appeal. Although Johnson filed his habeas petition in the district court pursuant to both §§ 2241 and 2254, his petition is more properly construed as arising under

* Local Rule 47.5.1 provides: "The publication of opinions that 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

§ 2241(c)(3) because Johnson was in custody due to revocation of his parole by the parole board and not pursuant to a state-court judgment. See § 2254(a). A § 2241 petition must be filed in the district where the petitioner is incarcerated. A CPC is not necessary in an appeal from the denial of § 2241 habeas because a CPC is required only in an appeal from the denial of habeas relief "where the detention complained of arises out of process issues by a state court." 28 U.S.C. § 2253.

When Johnson filed his habeas petition, he was incarcerated at the Eastham Unit in Lovelady, Texas, where he remains. Lovelady is in Houston County, which is located in the Eastern District of Texas. See 28 U.S.C. § 124(c)(7). Johnson filed his petition in the Western District of Texas. The district court was thus without jurisdiction to consider Johnson's petition.

Accordingly, Johnson's motion for CPC is DENIED as unnecessary. Because the district court lacked subject-matter jurisdiction to consider Johnson's petition, his motion for IFP is DENIED and the appeal dismissed.

APPEAL DISMISSED.