IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50330
USDC No. W-96-CV-47

TODD W. ALTSCHUL,

Petitioner-Appellant,

versus

TEXAS BOARD OF PARDONS
& PAROLES,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Texas

October 21, 1996

Before GARWOOD, JOLLY and DENNIS, Circuit Judges.

BY THE COURT:

Todd W. Altschul, Texas prisoner #586467, has filed an application for a certificate of probable cause (CPC), an application for a certificate of appealability (COA), and a motion for leave to proceed in forma pauperis (IFP) to appeal the district court's dismissal of his petition for a writ of habeas corpus under 28 U.S.C. § 2254 as duplicative. Altschul argues that he will be unlawfully restrained in the future if he must become parole eligible before he will be released to federal

authorities to serve his pending federal sentence.

A CPC requires a substantial showing of the denial of a federal right. Barefoot v. Estelle, 463 U.S. 880, 893 (1983). A COA may be issued only if the prisoner has made a substantial showing of the denial of a constitutional right. § 2253(c)(2).

The district court abused its discretion in dismissing the complaint as duplicative because Rule 2(d) of the Rules Governing § 2254 Cases requires separate petitions for attacks on judgments from multiple state courts. Nevertheless, Altschul's claim of unlawful restraint in the future is not yet ripe. As the claim is more hypothetical than real, it does not present a federal court with the Article III case or controversy requisite to its jurisdiction. Cinel v. Connick, 15 F.3d 1338, 1341 (5th Cir.), cert. denied, 115 S. Ct. 189 (1994). Altschul's requests for CPC, COA, and IFP are GRANTED. The judgment dismissing Altschul's petition contains no language advising whether the dismissal is with or without prejudice. The judgment of the district court is MODIFIED to be explicitly WITHOUT PREJUDICE, and AFFIRMED as MODIFIED.