

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11230
Summary Calendar

GARY REED WALP,

Plaintiff-Appellant,

versus

VICTOR RODRIGUEZ, Chairman, Texas Board
of Pardons and Paroles,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-2311-H
- - - - -

April 8, 1998

Before WIENER, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Gary Reed Walp, Texas prisoner #314299, requests permission to proceed in forma pauperis (IFP) on appeal. He argues that the district court erred by construing his pleading as one brought pursuant to 28 U.S.C. § 2254 rather than as one brought pursuant to 42 U.S.C. § 1983. Because Walp challenges the duration of his sentence following the revocation of his parole, his challenge properly sounds in habeas. Orellana v. Kyle, 65 F.3d 29, 31 (5th Cir. 1995), cert. denied, 116 S. Ct. 736 (1996). Accordingly,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the district court did not err by construing Walp's pleading as one brought pursuant to § 2254, and Walp's assertion to the contrary is without merit. Because his appeal is without merit, it is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Walp's motion for IFP is DENIED.

Walp is cautioned that future frivolous civil suits and appeals filed by him or on his behalf will invite the imposition of sanctions. Walp is cautioned further to review any pending suits and appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; IFP DENIED; SANCTIONS WARNING ISSUED.