

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-11316

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ROBERT M. BARNARD,

Petitioner-Appellant,

versus

KANSAS DEPARTMENT OF CORRECTIONS, Director;  
GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;  
CARLA STOVALL, Attorney General of Kansas,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:97-CV-38-C  
- - - - -

July 23, 1998

Before JOLLY, WIENER and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Robert M. Barnard (#568435), a Texas state prisoner, has applied for a certificate of appealability ("COA") for an appeal from the district court's denial of his application, under 28 U.S.C. § 2241, for a writ of habeas corpus. Barnard's habeas application challenges the legality of a detainer lodged against him by the State of Kansas, Department of Corrections, in connection with a parole-violator's warrant. Because Barnard is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not detained pursuant to a "process issued by a State court," a COA is not required. 28 U.S.C. § 2253.

No further briefing is necessary to decide the appeal. See Dickinson v. Wainwright, 626 F.2d 1184, 1186 (5th Cir. 1980). Barnard contends that his right to due process has been violated by the failure of Kansas authorities to grant him an immediate parole-revocation hearing, in accordance with Morrissey v. Brewer, 408 U.S. 471 (1972). Essentially for reasons adopted by the district court, we hold that Barnard has failed to present a nonfrivolous issue on appeal. See Barnard v. Johnson, No. 1:97-CV-038-C (N.D. Tex. Nov. 14, 1997) (unpublished); see also Moody v. Daqqett, 429 U.S. 78, 86-87 (1976); Cook v. United States Atty. Gen., 488 F.2d 667, 673 (5th Cir. 1974). Because Barnard's appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

COA DENIED AS UNNECESSARY; APPEAL DISMISSED.