

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40417
Summary Calendar

HERMAN PALMER,

Petitioner-Appellant,

versus

MELINDA BOZARTH ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:96-CV-669

July 29, 1998

Before DUHE' EMILIO M. GARZA and DeMOSS, Circuit Judges.

PER CURIAM:*

Herman Palmer, Texas prisoner # 537392, seeks to appeal the dismissal of what he denominated as an application for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Although Palmer purported to file this action under 28 U.S.C. § 2241, his action complaining of policies affecting his good-conduct time and for the restoration of good-conduct time is more properly

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

construed as arising under § 2254. See Hallmark v. Johnson, 118 F.3d 1073, 1075-76 (5th Cir.) (COA required in a case involving a challenge to TDCJ's policy involving the restoration of good-conduct time), cert. denied, 118 S. Ct. 576 (1997); Story v. Collins, 920 F.2d 1247, 1250-51 (5th Cir. 1991) (good-conduct time claim attacks conditions of restraint under judgment of conviction).

Palmer may not take an appeal in this case unless he first obtains a certificate of appealability (COA), which must be ruled on in the first instance by the district court. 28 U.S.C. § 2253(c)(1); Muniz v. Johnson, 114 F.3d 43, 45 (5th Cir. 1997). Compliance with the COA requirement of § 2253(c) is jurisdictional, and the lack of a ruling on a COA in the district court causes this court to be without jurisdiction to consider this appeal. Muniz, 114 F.3d at 45. This case is therefore REMANDED to the district court for the limited purpose of obtaining a ruling on a COA. If the district court decides to issue a COA, it must specify the issues which warrant review. Muniz, 114 F.3d at 45.

REMANDED.