

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10051
Conference Calendar

JOHN R. DOWARD,

Petitioner-Appellant,

versus

STATE OF TEXAS,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:97-CV-995-E
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

John R. Doward, federal prisoner # 14709-038, filed an application under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. The district court summarily dismissed Doward's § 2254 application as time barred by the one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act (AEDPA).

The district court did not have subject matter jurisdiction to entertain Doward's § 2254 application. In Pleasant v. Texas,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

134 F.3d 1256, 1257 (5th Cir. 1998), we addressed the claim of a federal prisoner seeking § 2254 relief "because his Texas conviction was used to enhance the federal sentence for which he is currently incarcerated." We cited Maleng v. Cook, 490 U.S. 488, 492 (1989), for the proposition "that a petitioner whose sentence has expired is no longer 'in custody' for purposes of that conviction, even if it was used to enhance his current or future sentences." Pleasant, 134 F.3d at 1258. Doward's state sentence has expired and he is now in federal custody in Terre Haute, Indiana, for a conviction from the United States District Court for New Hampshire. As in Pleasant, the district court did not have subject matter jurisdiction over the § 2254 application.

Accordingly, Doward's motions for a certificate of appealability (COA) and leave to proceed in forma pauperis (IFP) are GRANTED. The judgment of the district court is hereby VACATED and the case REMANDED with instructions that it be dismissed for lack of subject matter jurisdiction.

MOTIONS GRANTED; VACATED and REMANDED WITH INSTRUCTIONS.