

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9556
Conference Calendar

DANNY MCCRAY MATHERLY,

Plaintiff-Appellant,

versus

BRUCE LYNN, Secretary of
the Department of Corrections at
Baton Rouge, Louisiana, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 92 0386 G L
- - - - -
August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Danny McCray Matherly, a prisoner in the Dixon Correctional Institute in Jackson, Louisiana, filed a complaint under 42 U.S.C. § 1983 alleging that he was promised a sentence to run concurrently to a sentence imposed in Texas, but was given a consecutive sentence. The district court found that Matherly's complaint raised both civil rights and habeas corpus issues.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

A § 1983 action is the appropriate remedy for recovering damages for mistreatment or illegal administrative procedures. Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact of confinement. Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); see also Deters v. Collins, 985 F.2d 789, 792-96 (5th Cir. 1993). To determine which remedy a prisoner should pursue, the Court looks beyond the relief sought to determine whether the claim, if proved, would factually undermine or conflict with the state court conviction. Richardson, 651 F.2d at 373.

Matherly's claim is that he did not enter a knowing and voluntary guilty plea because he was deceived as to the nature of the sentence he would receive. The claim serves as a challenge to the legality of his confinement and must first be brought as a habeas action. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). The district court noted that Matherly had filed for habeas relief in state court, but had not exhausted the process. As Matherly has not presented his habeas petition to the highest court in Louisiana, the Louisiana Supreme Court, the district court was correct in dismissing Matherly's federal habeas claims without prejudice and is affirmed. See Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988).

A district court may not dismiss with prejudice a civil rights claim, irrespective of merit, until the habeas remedies related to it have been exhausted. Williams v. Dallas County

Com'rs, 689 F.2d 1212, 1215 n.2 (5th Cir. 1982), cert. denied, 461 U.S. 935 (1983). The claim could have been properly dismissed without prejudice if the dismissal did not actually prejudice Matherly's claim by action of the state statute of limitations. See Serio, 821 F.2d 1119; Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982). In its dismissal without prejudice, the district court noted that Matherly had already begun the process of seeking habeas relief. Further, the district court specifically stated that the dismissal was without prejudice and "with leave to refile when it is procedurally proper to do so." It is not clear that this language protects Matherly's claim from the action of the state limitations period. This language was a specific change in the magistrate judge's recommendation that Matherly's § 1983 claim be stayed pending exhaustion of both his state and federal habeas remedies and that the case be administratively closed for statistical purposes. That disposition would have protected Matherly's civil rights action beyond doubt. Therefore, the district court's action in dismissing, without prejudice, Matherly's § 1983 claim is vacated and the case remanded with instructions to stay Matherly's § 1983 claim pending exhaustion of both his state and federal habeas remedies.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.