

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8593
Conference Calendar

R. KEITH MAIDMAN
a/k/a Robert M. Sosa,

Plaintiff-Appellant,

versus

TEXAS DEPT. CRIMINAL JUSTICE
BOARD OF PARDON & PAROLE

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-93-CV-316
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

R. Keith Maidman, a/k/a Robert M. Sosa, a Texas state prisoner currently incarcerated as the result of a revocation of his parole, filed a civil rights complaint, in forma pauperis (IFP), pursuant to 42 U.S.C. § 1983, alleging that, due to an unconstitutional parole revocation on June 23, 1993, he lost 23 months of calendar time, as well as all acquired good conduct time upon arrival at prison. He also maintains that his

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

revocation had no legal basis, he is being detained against his will, the preliminary hearing and the hearing officer were biased, the Texas Board of Pardons and Paroles (Board) and all of the defendants involved in the case denied him due process of law, and that the Board revokes cases without reviewing each individual case properly.

Liberally construed, his petition challenges indirectly the revocation of his parole. We require a plaintiff such as Maidman, who attempts to challenge indirectly the legality of his confinement pursuant to a parole revocation, to pursue state and federal habeas remedies prior to asserting a § 1983 claim. Jackson v. Torres, 720 F.2d 877, 879 & n.5 (5th Cir. 1983); see Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1118-19 (5th Cir. 1987). Only after exhaustion of both state and federal habeas remedies will Maidman be allowed to proceed as a civil rights petitioner. Serio, 821 F.2d at 1119. A prisoner must first exhaust state habeas remedies if he challenges a single hearing as being constitutionally defective. Id. at 1118.

On appeal, Maidman attempts to redefine his allegations to challenge, in a general sense, the constitutionality of the rules, customs, and procedures used by the Board regarding parole revocation so as to render his claim appropriate for § 1983 relief at this time. See Spina v. Aaron, 821 F.2d 1126, 1128 (5th Cir. 1987). However, it is obvious from the record that his § 1983 petition challenged indirectly the legality of his revocation and confinement. The attack on the Board's rules,

customs, and procedures was not raised in the district court and, therefore, is not properly before this Court. Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985).

To the extent that Maidman's allegation that the Board revokes cases without reviewing each case properly could possibly sound as a § 1983 claim, that claim is inextricably intertwined with Maidman's other claims and is not so factually distinct as to readily permit the district court to analyze it separately. See Serio, 821 F.2d at 1119.

Therefore, the district court's dismissal of Maidman's § 1983 petition without prejudice was correct. We AFFIRM.

IT IS FURTHER ORDERED that the statute of limitations is deemed tolled while Maidman pursues habeas relief. Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992).