

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20932

AUTRY LEE JONES,

Petitioner-Appellant,

versus

WAYNE SCOTT,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-94-1111
- - - - -
(May 18, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

Autry Lee Jones requests a certificate of probable cause to appeal the dismissal of his § 2254 petition which challenges an expired 1963 state court conviction. The district court dismissed Jones' petition for lack of subject matter jurisdiction, concluding that he was not "in custody" under the conviction he attacked.

Unless a petitioner is in custody for the challenged offense at the time he files a § 2254 petition, the district court does

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

not have subject matter jurisdiction to entertain the action. Maleng v. Cook, 490 U.S. 488, 490 (1989). "[A] habeas petitioner meets the 'in custody' requirement where he challenges a conviction used to enhance another conviction for which he is currently in custody." Thompson v. Collins, 981 F.2d 259, 261 (5th Cir. 1993).

Because Jones did not allege that the 1963 sentence enhanced another conviction or the sentence he was presently serving, he directly attacked an expired conviction in his § 2254 petition. The district court lacked subject-matter jurisdiction to entertain the action because Jones is not in custody for the 1963 state court conviction. See Maleng, 490 U.S. at 490.

Accordingly, CPC is DENIED.

IFP is DENIED.