

February 17, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60591
SUMMARY CALENDAR

CLINTON EMERSON,

Plaintiff - Appellant

v.

MISSISSIPPI STATE PAROLE BOARD, Chairman and Members

Defendant - Appellee

On Appeal from the United States District Court for the
Northern District of Mississippi
(4:03-CV-204-MB)

Before REYNALDO G. GARZA, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

REYNALDO G. GARZA, Circuit Judge:¹

In this appeal we review the district court's decision to dismiss Plaintiff-Appellant, Clinton Emerson's (hereinafter "Emerson"), civil rights complaint for failing to state a cause of action upon which relief could be granted and the denial of his post-judgment motion.

Emerson is serving a life sentence plus fifteen years' imprisonment in Mississippi. After being denied parole for the fourth time, Emerson sought to appeal the Mississippi State Parole

¹Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Board's decision. He was denied because there is no appeals process in Mississippi for decisions made by the Parole Board. Emerson then filed suit pursuant to 42 U.S.C. § 1983, asking for an investigation into Mississippi's parole procedures. He also claimed that the Parole Board had violated his civil rights by denying him parole.

The district court properly dismissed Emerson's suit because under Mississippi law, Emerson has no protected liberty interest in parole. *See* MISS. CODE ANN. §§ 47-7-3, 47-7-17; *Scales v. Mississippi State Parole Bd.*, 831 F.2d 565, 565-66 (5th Cir. 1987). Thus, Emerson cannot show that he suffered the deprivation of a constitutional right. *Id.* Emerson's also fails to make the requisite showing for an equal protection claim. *See Thompson v. Patterson*, 985 F.2d 202, 207 (5th Cir. 1993).

Further, the district court was correct in denying Emerson's post-judgment motion arguing that the Administrative Procedure Act applied to the Mississippi State Parole Board's procedures. The Mississippi State Parole Board is not an agency under the meaning of the Administrative Procedure Act. *Johnson v. Wells*, 566 F.2d 1016, 1018 (5th Cir. 1978); *Edward H. Bolin Co. v. Banning Co.*, 6 F.3d 350, 353 (5th Cir. 1993).

For the foregoing reasons, the judgment of the district court is affirmed.