

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50436
USDC No. W-96-CV-294

HUMBERTO RUIZ,

Petitioner-Appellant,

versus

GARY L. JOHNSON,
Director, Texas Dep't
of Criminal Justice,
Institutional Division,
in his official capacity,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
- - - - -

April 28, 1998

Before DUHE', DeMOSS and DENNIS, Circuit Judges.

PER CURIAM:*

Humberto Ruiz, Texas prisoner # A90970325, has filed an application pursuant to Fed. R. App. P. 24(a) for leave to proceed in forma pauperis (IFP) on appeal, following the district court's dismissal of his habeas corpus petition, which it construed as a civil rights suit, for failure to state a claim upon which relief could be granted.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court erred in construing Ruiz's habeas corpus petition as a civil rights complaint. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Because Ruiz has been released from custody for his state court criminal conviction, his habeas challenge seeking the restoration of good-time credits is moot. See Spencer v. Kemna, 118 S. Ct. 978, 983-88 (1978).

Ruiz's motions for discovery and for summary judgment are also DENIED as moot.

Ruiz has not presented a nonfrivolous issue on appeal. See 28 U.S.C. § 1915(a). Because Ruiz has not demonstrated a nonfrivolous issue for appeal, his motion to proceed IFP is DENIED, and the appeal is DISMISSED. See 5th Cir. R. 42.2.

APPEAL DISMISSED.