

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40584
Conference Calendar

JOHNNIE R. PROPES,

Plaintiff-Appellant,

versus

COLLIN COUNTY DISTRICT ATTORNEY; PLANO POLICE
DEPARTMENT; HONORABLE JOHN ROACH,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:04-CV-65

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Johnnie R. Propes, Texas state prisoner # 1178904, appeals the district court's dismissal of his pro se, in forma pauperis, 42 U.S.C. § 1983 civil rights complaint as frivolous and for failure to state a claim. With the benefit of liberal construction, Propes alleged that he was falsely arrested for aggravated assault and that the use of that charge, along with a 1971 conviction, to enhance his sentence for a 2003 murder conviction constituted malicious prosecution. He also alleged

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that the Collin County prosecutor used his prior offenses to enhance his sentence because he was a black activist.

We review a dismissal as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) for an abuse of discretion. Taylor v. Johnson, 257 F.3d 470, 472 (5th Cir. 2001). We review a dismissal for failure to state a claim upon which relief may be granted de novo. Hart v. Hairston, 343 F.3d 762, 763-64 (5th Cir. 2003); § 1915(e)(2)(B)(ii).

Propes's allegations, if proven, would implicate the validity of his murder conviction. The claims thus are not cognizable under § 1983. See Heck v. Humphrey, 512 U.S. 477, 486 (1994).

Propes's appeal is frivolous and therefore is dismissed. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. In Propes v. Dretke, No. 04-50822 (5th Cir. Apr. 20, 2005), we imposed the 28 U.S.C. § 1915(g) bar against Propes. We warn Propes that further filing of frivolous complaints or pleadings may result in additional sanctions against him.

APPEAL DISMISSED; SANCTION WARNING ISSUED.