

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10165
Conference Calendar

JOHNNY PAUL RIVERS,

Plaintiff-Appellant,

versus

J. B. WILLIAMS, Investigator,
Dallas Police Department,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:01-CV-2676-M

August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Johnny Paul Rivers, Dallas County inmate No. 01002965, appeals the district court's dismissal of his in forma pauperis complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2). Our review is for abuse of discretion. Norton v. Dimazana, 122 F.3d 286, 291 (5th Cir. 1997).

Rivers, who is awaiting trial on charges of aggravated sexual assault, alleges that Officer Williams failed to give

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rivers Miranda** warnings, coerced Rivers to sign a false confession, and subjected Rivers to verbal abuse; and that the other defendants conspired with Williams to falsify documents, intimidate witnesses, and withhold favorable evidence in an effort to convict Rivers on trumped-up charges. Because Rivers has yet to be convicted of the charges against him, his claims of a wrongfully-obtained confession and a conspiracy to obtain his conviction allege a claim of malicious prosecution, which requires proof that the prosecution has been terminated in the plaintiff's favor. Woods v. Smith, 60 F.3d 1161, 1164 (5th Cir. 1995). Rivers' allegations of verbal abuse by Officer Williams are frivolous because verbal abuse is not actionable under § 1983. Bender v. Brumley, 1 F.3d 271, 274 n.4 (5th Cir. 1993).

AFFIRMED.

** Miranda v. Arizona, 384 U.S. 436 (1966).