

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-1894
Summary Calendar

Ramon X. Evans,

Plaintiff-Appellant,

VERSUS

Tarrant County Sheriff's Department,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(CA4-92-651-A)

(March 1, 1993)

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Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge*:

Proceeding pro se and informis pauperis, Evans filed an action under 42 U.S.C. § 1983 alleging denial of access to the courts, unsanitary prison conditions, ineffective assistance of counsel and indifference to serious medical needs. The district court

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dismissed the complaint as frivolous. We affirm in part and vacate and remand in part.

Facts and Prior Proceedings

On August 27, 1992, Ramon X. Evans filed this civil rights action, pro se and **in forma pauperis**, against the Tarrant County Sheriff's Department and other employees of the Tarrant County prison system. The next day, on August 28, 1992, the district court dismissed the complaint as frivolous holding that Evans' claims had no realistic chance of ultimate success. The district court specifically noted that Evans had not sued the proper parties and to the extent that Evans alleged he was denied effective assistance of counsel, habeas corpus was the appropriate remedy, not a § 1983 complaint. In addition, the district court dismissed the complaint because the allegations were conclusory. Evans was not given the opportunity to amend his complaint or to expand on the factual allegations in the complaint. There was no **Spears**¹ hearing nor any attempt by the district court to develop the known facts. Evans timely appealed to this Court.

Discussion

The district court may dismiss a complaint as frivolous under 28 U.S.C. § 1915(d) when it lacks an arguable basis in fact or law. **Ancar v. Sara Plasma, Inc.**, 964 F.2d 465, 468 (5th Cir. 1992). This court reviews the district court's dismissal for abuse of discretion. **Id.** A district court may abuse its discretion by prematurely dismissing an action without permitting the pro se

¹ **Spears v. McCotter**, 766 F.2d 179, 181-82 (5th Cir. 1985).

plaintiff to amend his complaint to name the proper parties. **See Gallegos v. La. Code of Crim. Procedures Art. 658 Paragraph A and C(4)**, 858 F.2d 1091, 1092 (5th Cir. 1988). A district court may also abuse its discretion by prematurely dismissing a colorable constitutional claim without permitting the pro se plaintiff to amend his complaint in order to expand the factual basis of his claim. **Foulds v. Corley**, 833 F.2d 52, 53-55 (5th Cir. 1987).

In view of these established principles, we find that the district court abused its discretion with regard to Evans' § 1983 claim. Evans sued the Tarrant County Sheriff's Department, and the district court held that the Sheriff's Department was not a proper party because it was not a "person" within the meaning of § 1983. In addition, the court stated that the remaining defendants were also improper parties because Evans sued them under the theory of respondeat superior which is inapplicable in § 1983 actions.

A pro se plaintiff such as Evans, however, should be accorded leniency when drafting pleadings and should be given the opportunity to amend the complaint to name the proper parties if the complaint appears to allege a potential ground for relief. **Gallegos**, 858 F.2d at 1092. In addition, the district court dismissed Evans' complaint because it contained nothing more than a "rambling list of conclusory statements unsupported by [any] facts." Construing Evans complaint in the light most favorable to him and accepting his allegations as true, we think Evans has alleged colorable claims and should be permitted to expand on the factual basis of these claims. **See Foulds**, 833 F.2d at 53-55.

Specifically, Evans alleged that he was denied access to the courts; that he was subjected to unsanitary prison conditions; and that he was denied adequate medical treatment. On remand, the district court should permit Evans to amend his complaint to name the specific individuals who allegedly deprived him of his constitutional rights, and should also permit him to develop a factual basis for his conclusory allegations. **Foulds**, 833 F.2d at 55; **Gallegos**, 858 F.2d at 1092.

Finally, the district court held that Evans' allegation that he was denied effective assistance of counsel should be remedied through habeas corpus, not a Section 1983 action. The district court properly construed Evans complaint as a petition for writ of habeas corpus and properly dismissed it for failure to exhaust his state remedies. **See** 28 U.S.C. §§ 2254(b), (c).

Conclusion

Accordingly, we affirm the district court's dismissal of the ineffective assistance of counsel claim, but we vacate the dismissal of the Section 1983 action and remand to the district court with instructions to permit the plaintiff to amend his pleadings to name the proper parties and expand on the factual allegations in the complaint.