

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1939  
Summary Calendar  
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EARNEST RAY WALKER,

Plaintiff-Appellant,

versus

JIM HODGE and  
NAVARRO COUNTY JAIL,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Northern District of Texas  
(3:91 CV 1694 T)  
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September 2, 1993

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.\*

PER CURIAM:

Plaintiff-appellant Earnest Walker (Walker) on August 20, 1991, filed *pro se* and *in forma pauperis* the instant complaint against Jim Hodge (Hodge), Sheriff of Navarro County, and the Navarro County Jail invoking jurisdiction under 42 U.S.C. § 1983. Walker's complaint alleged that he was the victim of excessive bond setting and illegal imprisonment. He sought *only* release from confinement and dismissal of the charges against him. Because Walker's complaint challenged the validity of his confinement at Navarro County Jail, the magistrate judge found that it was really a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

petition for habeas corpus and recommended that Walker's action be dismissed without prejudice for failure to exhaust state remedies. In his objections to the magistrate judge's report, Walker asserted that his complaint was treated incorrectly as an application for habeas corpus since, at the time Walker filed the action, he was not a convicted prisoner. Walker also added a denial-of-access-to-the-courts claim and requested monetary damages in his objections. The district court adopted the magistrate judge's recommendations over Walker's objections and dismissed his petition without prejudice. Walker appeals. We affirm.

Section 1983 is generally the proper vehicle for federal suits seeking damages for civil rights violations related to confinement, *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), but is not the proper vehicle for suits brought by state prisoners challenging the fact or length of their confinement. *Serio v. Members of Louisiana State Board of Pardons*, 821 F.2d 1112, 1115 (5th Cir. 1987). The sole vehicle for such challenges is the federal writ of habeas corpus. *Id.*; *see* 28 U.S.C. § 2254.

The district court based its dismissal on the conclusion that Walker's complaint was in essence an application for habeas corpus, and that therefore his complaint should be dismissed for failure to exhaust state remedies. Walker's original complaint involved a challenge under section 1983 to the imposition of excessive bail, but the relief requested was release from confinement and dismissal of the criminal charges then pending against him. Although at the time he filed his complaint he was confined as a result of the allegedly excessive pretrial bail, by the time the magistrate judge issued the report, September 30, Walker had been convicted of the offense he had been held for (he appears to have been convicted September 10). A party may generally amend his pleading once as a matter of course at any time before a responsive pleading is served. *See* Fed. R. Civ. P. 15(a). No responsive pleading had been served in this case. *See Vernell v. United States Postal Service*, 819 F.2d 108, 110 (5th Cir. 1987). Construing his *pro se* pleadings liberally, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), Walker arguably amended his complaint to include a denial-of-access-to-the-courts claim and a request for damages in filing his objections to the magistrate

judge's report.<sup>1</sup> Walker also asserted in his objections that he was not attacking the sentence he was currently serving as a state prisoner, but was challenging his incarceration as a pretrial detainee at Navarro County Jail. *See Escobedo v. Estelle*, 655 F.2d 613, 614-15 (5th Cir. 1981).

Assuming *arguendo* that Walker's complaint was not properly dismissible for failure to exhaust state remedies, *see Tarter v. Hury*, 646 F.2d 1010, 1012 (5th Cir. 1981), Walker in his appeal has presented no reversible error in the district court's dismissal of his suit without prejudice.

On appeal, Walker complains only of the dismissal of his access to the court's claim, due to an allegedly inadequate law library and inadequate access to it or to law books, as asserted in his objections to the magistrate's report.

"[P]risoners have a constitutional right of adequate, effective and meaningful access to the courts, a right which 'requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing . . . adequate law libraries or adequate assistance from persons trained in the law.'" *Morrow v. Harwell*, 768 F.2d 619, 622 (5th Cir. 1985) (quoting *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)). In his objections to the magistrate judge's report, Walker acknowledges that when confined on the complained of occasion he was represented by appointed counsel. He has never denied this. Moreover, Walker has not shown that he was actually denied access to the courts, and thus he has not stated a cognizable claim. *See Mann v. Smith*, 796 F.2d 79, 84 n.5 (5th Cir. 1986). Accordingly, Walker's claim in this respect lacked any arguable basis in both fact and law.<sup>2</sup>

The dismissal without prejudice of Walker's suit is

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<sup>1</sup> Walker also alleged in his objections that Navarro County mail authorities read his legal mail without his consent. However, as he does not raise this issue on appeal, it is abandoned. *See Cooper v. Sheriff, Lubbock County, Tex.*, 929 F.2d 1078, 1081 n.1 (5th Cir. 1991).

<sup>2</sup> Even if Walker had raised on appeal the dismissal of his excessive bail claim, its dismissal without prejudice is not error because he has failed to allege any specific act or conduct on the part of either of the defendants in this respect. *See Potter v. Clark*, 497 F.2d 1206, 1207-08 (7th Cir. 1974). And, the sheriff does not fix bail. Moreover, "Navarro County Jail" is not a legal entity. There is no *respondeat superior* liability under section 1983.

AFFIRMED.<sup>3</sup>

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<sup>3</sup> We also deny Walker's "Motion for Summary Judgment" filed in this Court.