

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1952
Summary Calendar

GREGORIO SANCHEZ, JR.,

Plaintiff-Appellant,

v.

HELEN SMITH, as Parole Officer, and
TRACY SNELL MORGAN, as Parole Hearing Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:91 CV 138 C)

October 18, 1993

Before DAVIS, JONES and DUHÉ, Circuit Judges.*

PER CURIAM:

Gregorio Sanchez, Jr., a Texas prisoner proceeding pro se and in forma pauperis (IFP), filed a civil rights action against Texas Department of Criminal Justice parole officers Helen Smith and Tracey Snell Morgan, alleging that Smith and Morgan wrongly caused his parole to be revoked after he was accused of sexually assaulting Debbie Romo. This evaluation of Sanchez' claims, like

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that of the lower courts, is based on the cumulative factual allegations in all of the pleadings that he filed. See Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986) (a court considering the sufficiency of a pro se petitioner's § 1983 pleadings should consider all of the pleadings before it). We find no error in the district court's dismissal of this case.

Sanchez charged that Smith, his probation officer, wrongly caused him to be arrested, refused to present Romo as a witness at the revocation hearing, withheld other relevant evidence, and tricked Sanchez into not presenting any witnesses. He also alleged that Smith denied him the opportunity to make bond prior to the revocation hearing. Sanchez alleged that Morgan, the hearing officer, was prejudiced against him because she was in pain from a toothache during the hearing and that both Smith and Morgan were not "not impartial" because "[t]hey were women and older women at that."

Sanchez' first amended complaint, filed May 30, 1991, requested 2.5 million dollars in damages, that Smith and Morgan be fired, and that Sanchez be "continued on parole with full pardon measures on this issue because of my innocence." On February 3, 1992, the magistrate judge entered an "Order for Response" that noted that Sanchez' petition presented mixed civil rights and habeas corpus claims and that there had been no showing that Sanchez had exhausted state habeas remedies. Thereafter, Sanchez filed a second amended complaint which stated: (1) that he had filed a supplemental complaint in December 1991 seeking release

without monetary damages;¹ (2) that he "no longer wishe[d] to pursue relief for freedom due to his incarceration"; (3) that he did not plan to challenge his state conviction; and (4) that he sought unspecified monetary damages "only because it's a prerequisite in civil lawsuits." On May 12, 1992, Sanchez filed a third amended complaint in which he asked only for declaratory relief and "any other action the Court may deem necessary or appropriate within the means of justice."

The magistrate judge did not consider the second and third amended complaints. On August 3, 1992, the magistrate judge recommended that Sanchez' complaint be dismissed without prejudice for failure to exhaust state remedies insofar as it sought habeas corpus relief and that his other claims be dismissed with prejudice because the defendants were immune from suit. The district court overruled Sanchez' objections and adopted the magistrate judge's recommendation. The district court also relied only on the first amended pleading, apparently under the erroneous assumption that it was the final pleading filed in the case.

DISCUSSION

Although it is unclear from his pleadings exactly what type of relief Sanchez desires, for the following reasons, the action of the district court was proper based on any or all of the pleadings filed by Sanchez.

Prisoners who bring § 1983 claims challenging the validity of their confinement must initially pursue both state and

¹ This complaint was never filed. See docket sheet, p. 7.

federal habeas corpus relief. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117, 1119 (5th Cir. 1987). Resolution of Sanchez' allegations that his parole was wrongly revoked could affect whether he is entitled to immediate or earlier release. These claims should first be pursued through habeas corpus. Id. As the magistrate judge noted, Sanchez has not sought habeas corpus relief.

If claims which should properly be asserted in habeas are mixed with claims that arise only under § 1983, "and the claims can be separated, federal courts should do so, entertaining the § 1983 claims." Serio 821 F.2d at 1119. Although Sanchez' charge that Smith caused him to be wrongly arrested could support a suit under § 1983, see Duckett v. City of Cedar Park, Tex., 950 F.2d 272, 278-79 (5th Cir. 1992), the wrongful-arrest allegation is an integral part of his claim that his parole should not have been revoked. Despite Sanchez' statement that he will not seek habeas relief, the Court cannot ignore the allegations challenging the validity of his confinement and construe the claim as sounding only under § 1983. Sanchez' challenge to the revocation of his parole is too tightly linked with the civil rights claim to permit severance. Serio, 821 F.2d at 1119. The dismissal of the complaint without prejudice was proper insofar as Sanchez' pleadings can be read as a challenge to his current confinement.

Although the district court did not so state, Sanchez' civil rights claims were apparently dismissed because he had failed to state a claim for which relief could be granted. Fed. R. Civ.

P. 12(b)(6). This Court will not affirm a dismissal under Rule 12(b)(6) unless it is obvious that the plaintiff is not entitled to relief under any set of facts provable in support of his allegations or if the allegations, accepted as true, provide no basis for legal recourse. Walter v. Torres, 917 F.2d 1379, 1383 (5th Cir. 1990). The Rule 12(b)(6) analysis can include affirmative defenses if they are obvious from the reading of the complaint. Garrett v. Commonwealth Mortg. Corp. of America, 938 F.2d 591, 594 (5th Cir. 1991). A defendant's absolute immunity from suit is a legal question that the Court reviews de novo. Walter, 917 F.2d at 1383.

Morgan is entitled to absolute quasi-judicial immunity for her exercise of decision-making power as a hearing officer. Id. at 1384; Farrish v. Mississippi State Parole Bd., 836 F.2d 969, 974 (5th Cir. 1988). Smith is also entitled to absolute quasi-judicial immunity for her actions in connection with the revocation of Sanchez' parole. See id. at 975-76; see also Johnson v. Kegans, 870 F.2d 992, 998 (5th Cir.), cert. denied, 492 U.S. 921 (1989). Although the immunity doctrine bars suit against Morgan and Smith only as individuals, in their capacity as state officers they are protected by Eleventh Amendment immunity. Id. at 998 n.5.

Sanchez devotes most of his appellate brief to an attack on the procedures used by the Texas Board of Pardons and Parole. The Court need not consider these arguments because Sanchez did not present them to the district court. See Russell v. Sun America Securities, Inc., 962 F.2d 1169, 1176 (5th Cir. 1992).

For any and all of these reasons, the judgment of the district court is **AFFIRMED**.