

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2856

Summary Calendar

O. D. VAN DUREN,

Plaintiff-Appellant,

versus

SGT. ROHLING, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92 401)

(August 6, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Plaintiff O.D. Van Duren is presently serving two twenty-five year prison sentences after pleading guilty to charges of robbery. Proceeding pro se and in forma pauperis, Van Duren filed this § 1983 action in U.S. District Court for the Southern District of Texas while awaiting trial at Harris County Jail. His initial complaint sought declaratory and injunctive relief against several

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

employees of the Houston Police Department, and was later amended to include as defendants the Harris County District Clerk, the Harris County District Attorney, and the Harris County Criminal District Courts. The federal district court, citing Younger v. Harris, 401 U.S. 37 (1971), declined to enjoin the criminal proceedings in state court. The district court also dismissed Van Duren's remaining claims, holding that because the asserted constitutional violations pertained to the constitutionality of his conviction and sentence, exhaustion of state court remedies was required.

On appeal, Van Duren contends that the district court erred in dismissing his various claims brought under § 1983. "Prisoners who challenge the constitutionality of their convictions or sentences must exhaust their state remedies." Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1116-17 (5th Cir. 1987); Hernandez v. Spencer, 780 F.2d 504, 505 (5th Cir. 1986). Van Duren has offered no evidence that he has exhausted his habeas remedies in both state and federal courts. See Hernandez, 780 F.2d at 505; Jackson v. Torres, 720 F.2d 877, 879 (5th Cir. 1983). Rather, his argument appears to be that the exhaustion requirement does not apply to the claims he has advanced in this case. This contention plainly lacks merit.

Van Duren's complaint and appellate brief refer to numerous constitutional claims, including alleged violations of the Fourth Amendment, Brady v. Maryland, 373 U.S. 83 (1963), and the Due Process Clause. His main claim on appeal, however, appears to be

that his guilty plea should be set aside because he was deprived of effective assistance of counsel in Texas state court. He argues that, but for his attorney's errors, he would not have pleaded guilty and would have insisted upon going to trial. Hill v. Lockhart, 106 S.Ct. 366, 370 (1985); Nelson v. Hargett, 989 F.2d 847, 850 (5th Cir. 1993). Van Duren's ineffective assistance claim to some extent subsumes his other constitutional claims, since these claims on appeal largely mirror the objections that counsel should have, but did not, make in state court.

Van Duren does not assert that he is entitled to damages. To the contrary, as in Hernandez, his constitutional claims "are inextricably intertwined with his challenge to the fact of his conviction." 780 F.2d at 504. Reversal of this outcome is the only relief he apparently seeks. Moreover, even if Van Duren's complaint contained claims that could properly be pursued as an initial matter under § 1983, our precedents require district courts to entertain these claims only if they may easily be separated from habeas claims subject to exhaustion. Serio, 821 F.2d at 1119. District courts need not "act[] as counsel for the pro se litigant," "pick[ing] through such a mass of ambiguous matter" in an attempt to "sort[] out one type of claim from another." Hernandez, 780 F.2d at 506.

It is far from clear that Van Duren has advanced any constitutional claims that have no bearing on the validity of his conviction. The district court did not err in dismissing all of

his claims for failure to exhaust his remedies in habeas. The judgment of the district court is AFFIRMED.