

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2911
Conference Calendar

DOUGLAS C. WELSCH,

Plaintiff-Appellant,

versus

CHARLES A. BROWN,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-89-3538
- - - - -
(October 29, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

A complaint filed in forma pauperis may be dismissed as frivolous under 28 U.S.C. § 1915(d) if it lacks an arguable basis in law or fact. Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). A dismissal under § 1915(d) is reviewed for an abuse of discretion. Id. at 1734.

To establish a cause of action under 42 U.S.C. § 1983, a plaintiff must demonstrate that some person has deprived him of a federal right and that the person who deprived him of that right

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

acted under color of state law. Manax v. McNamara, 842 F.2d 808, 812 (5th Cir. 1988). A court-appointed defense attorney acting in a criminal case does not act under color of state law. United States ex rel. Simmons v. Zibilich, 542 F.2d 259, 261 (5th Cir. 1976). In addition, a liberal construction of Welsch's pleadings does not suggest a conspiracy exception to establish state action. See Gipson v. Rosenberg, 797 F.2d 224, 225 (5th Cir. 1986)(citing Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 66 L.Ed.2d (1980)(an otherwise private person acts "under color of" state law when engaged in a conspiracy with state officials to deprive another of federal rights)), cert. denied, 481 U.S. 1007 (1987).

A claim that is based on an indisputably meritless legal theory is legally frivolous. Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). The district court did not abuse its discretion in dismissing Welsch's complaint under § 1915(d). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.