

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2942
Conference Calendar

ENRIQUE SANCHEZ,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Dept. of Criminal Justice,
Institutional Division,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1312
- - - - -

June 23, 1993

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

PER CURIAM:*

Enrique Sanchez challenges the district court's denial of his motion for relief from judgment in his civil rights action on the questions whether Texas' practice of forcing prisoners to work without pay constitutes involuntary servitude and whether that involuntary servitude was imposed pursuant to a constitutionally infirm conviction.

"[A]ppellate review of the denial of such a motion `must be

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

narrower in scope than review of the underlying order of dismissal so as not to vitiate the requirement of a timely appeal.'" Phillips v. Insurance Co. of N. America, 633 F.2d 1165, 1167 (5th Cir. 1981). We limit review to the question whether the district court abused its discretion. Id. at 1167.

The district court correctly found that there was no constitutional violation because Sanchez was "duly convicted" within the meaning of the Thirteenth Amendment. The Thirteenth Amendment's protection against involuntary servitude is not implicated in the case of a person duly convicted of a crime. See Wendt v. Lynaugh, 841 F.2d 619, 620 (5th Cir. 1988). Without a constitutional violation, Sanchez' § 1983 claim had no arguable basis in law and fact and was, thereby, frivolous. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

As to the claims regarding the fact of his confinement, the district court held that Sanchez' remedy was in habeas corpus "with the concomitant requirement of exhaustion of state remedies." "[W]here a prisoner's civil rights allegations impinge in part on the validity of his current confinement, he must initially seek relief through habeas corpus proceedings." Sheppard v. State of La. Bd. of Parole, 873 F.2d 761, 762 (5th Cir. 1989) (citing Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117-19 (5th Cir. 1987)). "[T]he requirement of exhaustion cannot be evaded by casting the complaint in civil rights form." Hernandez v. Spencer, 780 F.2d 504, 505 (5th Cir. 1986).

Accordingly, the district court did not abuse its discretion

in denying Sanchez' motion for relief from judgment.

AFFIRMED. The motions for appointment of counsel on appeal and release from custody are DENIED.