

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-3891
Summary Calendar

LAWRENCE RAY PITTMAN, SR.,

Plaintiff-Appellant,

VERSUS

JEROME M. WINSBERG, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-91-4619-M)

(September 23, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant Pittman was convicted in Louisiana State Court of attempted first degree murder and armed robbery. Proceeding pro se, he sued under 42 U.S.C. § 1983 the state judge, the district attorney and several assistants, involved in his trial, and the public defenders and private pro bono counsel who defended him. The district court dismissed all claims. Pittman appeals the dismissal as to all defendants except defense counsel. We affirm.

All claims against the trial judge and the district attorneys were properly dismissed because all these parties are immune from

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

suit. Imbler v. Pachtman, 424 U.S. 409 (1976); Brewer v. Blackwell, 692 F.2d 387, 396 (5th Cir. 1982). Appellant's claim that the trial judge waived his immunity defense because he did not plead it is meritless. It was plead in the judge's second answer which was treated as a motion to amend his original answer, the granting of which was in the district court's discretion. Cotita v. Pharma-Plast, U.S.A., Inc., 974 F.2d 598, 600 (5th Cir. 1992). Likewise, Appellants claim that immunity does not apply because he seeks injunctive relief also fails. There is nothing in Appellant's complaint that could possibly be construed as a request for injunctive relief.

Additionally, all claims against the district attorneys are prescribed. All allegations of wrongdoing on the part of the district attorneys involve conduct which occurred before the defendant was convicted which is more than one year before he filed this suit. See Gartrell v. Gaylor, 981 F.2d 254, 257 (5th Cir. 1993); Turner v. Uptown County, 967 F.2d 181, 185 (5th Cir. 1992); Elzy v. Roberson, 868 F.2d 793, 794 (5th Cir. 1989). No waiver occurred since the defense was claimed in the defendants' motion to dismiss.

Appellant's additional arguments that he has been denied his right to appeal, that the dismissal of his complaint was unconstitutional and in violation of the Federal Rules of Civil Procedure, and that a default should have been granted are meritless.

AFFIRMED.