IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4473
Conference Calendar

EDUARDO M. BENAVIDES, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

versus

MELVIN D. WHITAKER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:91cv171

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(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Eduardo M. Benavides filed a civil rights complaint under 42 U.S.C. § 1983. The suit alleges that the state judge improperly dismissed a civil rights action as frivolous under Texas Civ. Prac. & Rem. Code Ann. § 13.001 (West Supp. 1993). Benavides also alleges that the court clerk and deputy clerk mishandled his attempt to appeal the dismissal with the result being that he was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied an appeal. The district court dismissed the suit as frivolous pursuant to 28 U.S.C. § 1915(d).

A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a complaint as frivolous "`where it lacks an arguable basis either in law or in fact.'" Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992) (citations omitted). The main thrust of Benavides's complaint is to correct the allegedly improper actions of Judge Whitaker, Clerk Barnette, and Deputy Clerk Hohlt.

With respect to his request that Judge Whitaker's dismissal be overturned, "litigants may not obtain review of state court actions by filing complaints about those actions in . . . federal courts cast in the form of civil rights suits." Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986) (internal quotations and citation omitted). In Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986), this Court held that "[j]udicial errors committed in state courts are for correction in the state court systems, at the head of which stands the United States Supreme Court; such errors are no business of ours."

With respect to Benavides's request that the district court prohibit Judge Whitaker from presiding at prisoner cases, appoint him a fingerprint expert, and have the clerk file his pleadings, federal courts have no such power. Even though Benavides frames this in terms of a civil rights action for denial of access to the courts, stripped of this disguise, the action is one seeking

writs of mandamus against state court officials. See Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973). Additionally, the object of compelling the filing of his pleadings is to have the state appellate court reverse the dismissal of his appeal as untimely. Even if the dismissal was improper because Benavides's pleadings had been misinterpreted by the clerk, this is no more than an attempt to reverse the action of the state appellate court and as shown above is not properly the subject of a civil rights suit. See Hale, 786 F.2d at 691.

Benavides also alleges that Texas Civ. Prac. & Rem. Code Ann. § 13.001(b) (West Supp. 1993) is unconstitutional as a denial of access to the courts because crucial evidence needed to support the complaint would be destroyed by prison officials in the period between the entry of dismissal and the order of remand from the appellate court reversing the dismissal. Even liberally construed under Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), this argument does not present a constitutional challenge to the pauper's statutes, but merely complains about the effect of improperly dismissing a suit as frivolous or malicious.

For the first time on appeal, Benavides makes a similar argument concerning the constitutionality of dismissals as frivolous under 28 U.S.C. § 1915(d). The Supreme Court approved of dismissing suits as frivolous under § 1915(d) in Denton.

AFFIRMED.