

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4702
Summary Calendar

DARRELL WASHINGTON,

Plaintiff-Appellant,

versus

EDDIE COLLINS, Detective,
Fort Arthur Police Department,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
(CA1 92 90)

(April 16, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Darrell Washington filed this malicious prosecution claim pursuant to 42 U.S.C. § 1983 against Eddie Collins, the officer who testified at his state criminal trial. Washington alleged that Collins, a state officer, falsely testified at his trial concerning his involvement in a drug transaction. The district court

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

dismissed Washington's complaint as frivolous, and Washington appeals.¹

To prevail in his claim of malicious prosecution, Washington would have to prove the following: (1) a criminal action was commenced against him; (2) the prosecution was caused by Collins or his aid; (3) the action terminated in Washington's favor; (4) he was actually innocent; (5) Collins acted without probable cause; (6) Collins acted with malice; and (7) the criminal proceeding damaged Washington. See Martin v. Thomas, 973 F.2d 449, 456 (5th Cir. 1992). Obviously Washington cannot conceivably support his claim of malicious prosecution because the litigation was not terminated in his favor, i.e., he was found guilty. Washington's § 1983 claim is therefore utterly without merit and indeed frivolous. Accordingly, the decision of the district court to dismiss Washington's § 1983 complaint with prejudice is

A F F I R M E D.

¹The district court also dismissed Washington's action as barred by Texas's two-year statute of limitations. Because we agree with the district court that Washington's claim is frivolous, we need not address this issue.