

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4866
Summary Calendar

EARL WILSON,

Plaintiff-Appellant,

VERSUS

WILLIAM HENRY SANDERS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(CV-89-1897-A)

(January 3, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Earl Wilson appeals the dismissal of his § 1983 suit against state judge Jimmy C. Peters, assistant district attorney Donald Wilson, and his court-appointed attorney William Henry Sanders arising out of his plea of guilty to an aggravated sexual battery charge. We affirm.

Plaintiff contends that defendants conspired to allow him to plead guilty to aggravated sexual battery. According to plaintiff,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defendants knew that the offense to which he pled guilty was not responsive to the charge on which he was indicted -- aggravated rape -- and that the aggravated rape charge had not been dismissed. He also complains that certain medical reports were not presented to the court during the hearing on his guilty plea.

We note initially that a question exists regarding our appellate jurisdiction. The district court entered its final appealable judgment on September 23, 1992. Although Wilson filed notices of appeal before that date in response to rulings by the district court on individual motions, those notices of appeal were premature and cannot serve as the basis for our jurisdiction.

Wilson, however, filed an appellate brief on October 19, 1992, in which he detailed his arguments concerning Judge Peters, Donald Wilson and Sanders, but not Dr. Milton S. Rhea. Because the appellate brief was filed less than thirty days after the district court's final judgment, we allow it to serve as the notice of appeal. **See Smith v. Barry**, ___ U.S. ___, 112 S.Ct. 678, 682, 116 L.Ed.2d 678, 685 (1992). Under these circumstances, Wilson has provided Judge Peters, Donald Wilson, and Sanders with adequate notice of his appeal, and we will consider the merits of his appeal as to these three defendants. Wilson, however, failed to provide Dr. Rhea with the same notice, and we therefore dismiss his appeal as to Dr. Rhea.

With respect to Wilson's appeal against Judge Peters and Donald Wilson, we find his arguments meritless. Judges and prosecutors have absolute immunity from damages in § 1983 actions

based on the performance of their official duties. **See Stump v. Sparkman**, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); **Slavin v. Curry**, 574 F.2d 1256, 1264 (5th Cir.), **modified on other grounds**, 583 F.2d 779 (5th Cir. 1978), **and overruled in part on other grounds by Sparks v. Duval County Ranch Co.**, 604 F.2d 976 (5th Cir. 1979) (en banc), **aff'd sub nom. Dennis v. Sparks**, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980).

In his appeal against his court-appointed attorney, Wilson argues that Sanders conspired with Judge Peters and Donald Wilson to allow him to plead guilty. A public defender, while not a state actor, may be liable under § 1983 if he conspires with state actors to deprive plaintiff of constitutional rights. **See Tower v. Glover**, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984).

Wilson, however, has failed to allege a constitutional violation. His allegation that the offense of aggravated sexual battery is not responsive to an aggravated rape charge is based entirely on Louisiana state law. Such a violation only amounts to a federal constitutional violation if the proceeding is rendered fundamentally unfair. **See Lavernia v. Lynaugh**, 845 F.2d 493, 496 (5th Cir. 1988). Because Judge Peters ascertained in a thorough hearing that Wilson knew that he was pleading guilty to aggravated sexual battery, the plea proceeding was not rendered fundamentally unfair.

Wilson also contends that his plea lacked a factual basis because the state withheld a medical report and another was not read at his hearing. We, however, find that the evidence presented

at the hearing provided an adequate factual basis for the court to accept Wilson's plea.

None of Wilson's other contentions merit discussion.

The judgment dismissing this action against Judge Peters and Messrs. Wilson and Sanders is AFFIRMED.

The appeal challenging the dismissal of Dr. Rhea is DISMISSED.