IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5224

Summary Calendar

Turner Myer, III,

Plaintiff-Appellant,

versus

Jim Weeks, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
92 CV 260

March 29,1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Turner Myer, III, was convicted of the aggravated sexual assault of his nine-year-old stepdaughter Sharon in Texas state court on August 14, 1985. Proceeding pro se and in forma pauperis, Myer brings this § 1983 suit against various individuals involved in his trial, naming as defendants Jim Weeks, the principal at Sharon's school; Thu Ngyuen, a health clinic employee; Craig Miller, the prosecutor; Terry Donohue, a Port Arthur, Texas police

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

officer; Judy Cornelius, a Texas Department of Human Resources employee; Dexter Patterson, his court-appointed attorney; and John Appleman, a county clerk. The district court dismissed the claims as to Donohue, Miller, Cornelius, and Patterson as time-barred and those involving Weeks, Ngyuen, and Appleman as frivolous pursuant to 28 U.S.C. § 1915 (d). We affirm.

I.

District courts may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis in either law or fact. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992). We review such § 1915(d) dismissals for abuse of discretion. Id. at 1734.

This case's lengthy procedural history is set out in the magistrate's report and district court's opinion. Myer was convicted and sentenced on charges of aggravated sexual assault in 1985. He filed two separate § 1983 suits in 1986, and another in 1989. Because Myer had not exhausted his state court remedies, the first two suits were dismissed without prejudice and the third was placed on the inactive docket pending exhaustion. Myer has since availed himself of possible habeas remedies, filing one state application for a writ of habeas corpus and two federal petitions pursuant to § 2254. The Texas Court of Criminal Appeals denied his application in 1990; we affirmed the district court's denial of Myer's separate federal petitions in 1991 and 1992. The instant § 1983 suit was filed on June 24, 1992.

The district court held that Myer's claims against Donohue, Miller, Cornelius, and Patterson were time-barred because these

individuals were not named as defendants in the 1986 civil actions. On appeal, Myer insists that all seven of the defendants in the present suit were included in suits he filed in 1986. We hold that the district court's judgment should be affirmed even if the statute of limitations has not run as to these four defendants, for the claims lodged against them are patently frivolous.

Myer asserts that Donohue, a police officer, committed perjury while testifying against him at the 1985 criminal trial. It is well-settled, however, that "[w]itnesses, including police officers, are . . . shielded by absolute immunity from liability for their allegedly perjurious testimony." Enlow v. Tishomingo County, 962 F.2d 501, 511 (5th Cir. 1992) (citing Briscoe v. LaHue, 103 S.Ct. 1108, 1121 (1983). Miller, the prosecutor in Myer's case, also enjoys absolute immunity from liability, see, e.g., Burns v. Reed, 111 S.Ct. 1934, 1941-42 (1991), and Myer's claim against him therefore fails as well.

Myer also maintains that Patterson, his court-appointed attorney, made several prejudicial errors at trial, including permitting the prosecutor to inform the jury that Myer gave Sharon a venereal disease, failing to subpoena witnesses, and allowing him to stand trial under an unconstitutional statute. Private attorneys who have conspired with state officials may be held liable under § 1983. See, e.g., Mills v. Criminal District Court No. 3, 837 F.2d 677, 679 (5th Cir. 1988). As in Mills, the incidents cited in support of Myer's conspiracy allegation would seem relevant only to the issue of ineffective assistance of

counsel, a claim that Myer raised in his second federal habeas petition. Id.; Myer v. Collins, No. 92-4450 (5th Cir. Oct. 8, 1992).

Myer contends that Cornelius, an employee of the Texas Department of Human Resources, improperly "brought Sharon to court for the trial and signaled to [the victim] as she testified." This claim has been previously considered, and rejected, by this court. See Myer v. Collins, No. 91-4032 (5th Cir. Mar. 27, 1991). As in his habeas petition, Myer has not shown how this conduct violated his federal rights.

The district court reached the merits of Myer's claims against Weeks, the principal at Sharon's school and a witness at trial, Nyguen, a health care worker and witness at trial, and Appleman, a county clerk who allegedly failed to provide Myer's sister with certain portions of the trial transcript The court's rejection of these claims was proper. As witnesses, Weeks and Nyguen, like Officer Donohue, are "shielded by absolute immunity from liability for their allegedly perjurious testimony." Enlow, 962 F.2d at 511. Myer's claim against Appleman is meritless as well.[1]

The district court's dismissal of the complaint is AFFIRMED.

AFFIRMED.

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[1] Myer asserts in his brief that the magistrate's recommendation of dismissal was based on his race and therefore constitutes a violation of the Equal Protection Clause. This claim appears utterly groundless and, in any event, is not properly before us because Myer failed to present it in the district court below. United States v. Cates, 952 F.2d 149, 152 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992).