IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5604
Summary Calendar

LARRY J. CULLUM,

Plaintiff-Appellant,

v.

ATTORNEY GENERAL OF USA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CV-1263)

(September 22, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.[*]

EDITH H. JONES, Circuit Judge:

Larry Cullum filed a civil rights suit against several federal and state officials and agencies alleging that his property was seized and that he was arrested and convicted in violation of his constitutional rights.[1]

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] The suit was originally filed in the federal district court in the District of Columbia. However, the D.C. court determined that the suit was filed in an improper venue and transferred the case to the Texas district court.

After most of the defendants filed motions to dismiss or for summary judgments, the magistrate judge issued a report, recommending dismissal of the claims against the federal defendants and the Freestone County Sheriff's Office with prejudice, and dismissal of the claims against the Texas defendants without prejudice. The district court adopted the recommendation of the magistrate judge and dismissed the complaint. We affirm.

Cullum was charged in a federal grand jury indictment on June 13, 1989, with conspiracy to distribute methamphetamine, seven counts of manufacturing phenylacetone, and two counts of filing false tax returns. Cullum was subsequently convicted on all charges following a jury trial, and the conviction was affirmed on appeal, although the case was remanded for resentencing on the tax charges. U.S. v. Devine, 934 F.2d 1325, 1329, 1348 (5th Cir. 1991), cert. denied, 112 S. Ct. 1197 (1992). Cullum's property used to manufacture and distribute drugs was forfeited.

Cullum argues that the district court authorized the seizure of his property pursuant to its "international maritime jurisdiction," and that this was improper because the case did not involve a maritime contract. The district courts have original and exclusive jurisdiction of any action or proceeding for the enforcement of a forfeiture incurred under any Act of Congress. 28 U.S.C. § 1355. Congress has authorized the forfeiture of real property used to facilitate the commission of a violation of Title 21, which deals with the control and prevention of drug abuse crimes, 21 U.S.C. § 881(a)(7), and Cullum has been convicted of

using his property to facilitate a drug manufacturing process in violation of 21 U.S.C. § 841(a)(1). U.S. v. Devine, 934 F.2d at 1331. We reject Cullum's asserted jurisdictional error.

Cullum next argues that he was entitled to a jury trial on the issue whether the Attorney General failed to remove a prescription drug from the controlled substance list, resulting in the unlawful seizure of his property. A plaintiff may have a cause of action for damages against a federal official who is responsible for injuring a constitutionally protected interest. Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971). In order to maintain the Bivens action, the plaintiff must first demonstrate a violation of his constitutional rights. Garcia v. U.S., 666 F.2d 960, 962 (5th Cir.), cert. denied, 459 U.S. 832 (1982).

Cullum has not alleged how the Attorney General's failure to remove an unspecified non-prescription drug from the controlled substance list resulted in a violation of his constitutional rights. Further, the validity of the reclassification of controlled substances by the Attorney General has been consistently affirmed by this court. U.S. v. Daniel, 813 F.2d 661, 662 (5th Cir. 1987). The district court did not err in dismissing the claim against the U.S. Attorney General.

Cullum contends that the district court erred in not granting his summary judgment filed in the District of Columbia on November 22, 1991, because the defendants had not filed a response in the case. The record does not reflect that Cullum's motion was

properly filed in the district court record. The record contains an undated letter to the Clerk of Court of the Texas District Court filed on January 27, 1992, asking for consideration of a "default judgment" that Cullum contended he filed in Washington, D.C. on November 22. Attached to the letter is a document entitled "Request to Enter Summary Judgment" requesting a judgment against the defendants in the amount of $24,000,000 because of the defendants' failure to respond to the complaint. Also attached was another document entitled "Demand for Due Process of Vitiation of Motion by Unqualified Parties."

The district court ordered the pleadings struck because Callum did not provide the necessary number of copies, the documents did not contain a certificate of service, and some of the pleadings did not contain the style and cause number of the case. Cullum again attempted to file a copy of his summary judgment pleading, along with various other documents, but the documents were found again to be deficient in the manner in which they were filed and were struck by the district court. Furthermore, the district court granted the defendants an extension of time in which to plead. Cullum's argument is without merit.

Cullum's next argument, which the state characterized as "unintelligible," is best stated in Cullum's own words: "Plaintiff invoked Article III jurisdiction for judicial review and IX and X Amendment reserved rights. Lower court acted as Article I tribunal with a single Article III judge with international flags still

controlling courtroom under law of flags in administrative court." We think the allegation speaks for itself.

Finally, Cullum argues that the district court's dismissal unconstitutionally deprived him of his right to trial by jury. The Federal Rules of Civil Procedure authorize the dismissal of claims by the district courts pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 56(c). Cullum cannot complain because he did not receive a jury trial if the district court correctly concluded that Cullum failed to state a claim against the defendants or that summary judgment was appropriate. Reynolds v. Georgia, 640 F.2d 702, 707 (5th Cir. Unit B), cert. denied, 454 U.S. 865 (1981).

Cullum's brief disputes only the district court's dismissal of the U.S. Attorney, which, as discussed above, is without merit. Although briefs of pro se appellants are to be liberally construed, some analysis of the issues is necessary to preserve the issues, or the issues will be considered waived. Price f. Digital Equipment Corporation, 846 F.2d 1026, 1027 (5th Cir. 1988). Cullum has waived his right to dispute the district court's ruling and cannot complain because he did not receive a jury trial.

Cullum filed a motion seeking to enjoin the sale of the forfeited property. Cullum filed a similar motion in the district court, but the district court struck the pleading from the record because the manner in which the pleading was filed was deficient. Cullum has not explained why he did not further pursue the issue in

the district court. The motion before this Court should be denied. Fed. R. App. P. 8. (application for an order granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court.) We also deny Cullum's motion for appointed counsel.

For the assigned reasons, the district court's judgment is **AFFIRMED**.