

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-8098  
Summary Calendar

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JONATHAN MARSHALL, SR.  
a/k/a JOE MARSHALL, ET AL.,

Petitioner-Appellant,

VERSUS

HARRY LEE HUDSPETH, ET AL.,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
90 CV 520

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May 5, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

DAVIS, Circuit Judge:<sup>1</sup>

Appellant challenges the dismissal of an action he brought for himself and several fellow inmates seeking relief for violation of their civil rights. We affirm the dismissal of Marshall's action and dismiss the appeal of other plaintiffs who are not identified in the notice of appeal.

I.

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jonathan Marshall filed a civil rights lawsuit on his own behalf and as a "first-friend" of numerous federal prisoners. Marshall, who is serving time for tax fraud, professes to be a "jailhouse-lawyer" and calls himself the "star-man" because he puts asterisks on the writs that he has written for his fellow inmates.

The lawsuit named numerous defendants, including U.S. District Judge Harry Lee Hudspeth, two U.S. Magistrate Judges, several U.S. Attorneys, U.S. Probation Officers, U.S. Customs Inspectors, private defense attorneys, and a U.S. Border Patrol Agent. With the exception of Marshall, the plaintiffs are Mexican-alien prisoners who were convicted of drug-courier offenses. The essence of their complaint is that defendants conspired to violate their constitutional rights at every phase of the judicial process.

Several defendants filed motions to dismiss the plaintiffs' complaint for failure to state a cause of action. The magistrate judge thoroughly evaluated the lengthy complaint and recommended dismissing the plaintiff's complaint for failure to state a cause of action. The magistrate judge concluded that the federal defendants were entitled to absolute or qualified immunity, and that the plaintiffs' claims of ineffective assistance and conspiracy did not state a federal civil rights cause of action. The magistrate judge also concluded that Marshall lacked standing to bring the lawsuit on his own behalf.

Marshall filed written objections to the magistrate judge's report, alleging that he "suffered personal injury traceable to the conduct of the defendants creating synthetic crimes and as the

exhibit F in the overflowing of the federal prisons." The district court concluded that Marshall's allegations of personal injury were conclusional and factually unsupported. The district court dismissed the complaint without prejudice.

II.

A.

As a preliminary matter, we must determine whether it has jurisdiction over parties not properly specified in Marshall's notice of appeal. **See Colle v. Brazos County, Tex.**, 981 F.2d 237, 241 (5th Cir. 1993). The failure to include the name of a party in the notice of appeal constitutes a jurisdictional bar to the appeal on behalf of the unidentified party. **Torres v. Oakland Scavenger Co.**, 487 U.S. 312, 317-18, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988). The notice of appeal in the present case contains a caption designating the prospective appellants as "Jonathan Marshall, et al." The body of the notice refers to the appellants as "the plaintiffs."

The use of the phrase "et al." utterly fails to provide notice of the identity of the appellants and fails to meet the specificity requirement of Fed. R. App. P. 3(c). **Torres**, 487 U.S. at 318. Similarly, the use of the phrase "the plaintiffs" does not indicate with any degree of certainty which of the other plaintiffs below joined in the appeal. **See Resolution Trust v. Sonny's Old Land Corp.**, 937 F.2d 128, 129 (5th Cir. 1991). None of the exceptions to **Torres** which are recognized by this Court is present in this situation. **See Colle**, 981 F.2d at 241. Thus, this Court's

jurisdiction is limited to Marshall's appeal.

**B.**

The single issue before this Court on Marshall's appeal is whether the district court correctly determined that Marshall lacked standing to bring the lawsuit on his own behalf.

To establish standing under Article III of the United States Constitution, a litigant must demonstrate (1) that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant; (2) that the injury fairly can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision. **Murray v. City of Austin, Tex.**, 947 F.2d 147, 151 (5th Cir. 1991), **cert. denied**, 112 S.Ct. 3028 (1992). A court should also consider whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties. **Id.**

Marshall asserts that the remaining plaintiffs are "legally incompetent to represent their own interests." The Supreme Court has held that if there is some genuine obstacle to a person asserting his own rights, a party with closely aligned rights may, in some cases, assert the third-party's rights. **See Singleton v. Wulff**, 428 U.S. 106, 116, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976). However, no such obstacle exists in this case because the original plaintiffs did not "lack the opportunity or ability to assert their own rights." **See Canfield Aviation, Inc. v. National Transp. Safety Bd.**, 854 F.2d 745, 748-49 (5th Cir. 1988). Further,

Marshall's rights are not closely aligned with the plaintiffs.

Marshall raised two issues for the first time in his objections to the magistrate judge's report and recommendation. Marshall alleged that he "suffered personal injury, suffering, and emotional stress" because of "the overflowing of federal prisons." He alleged that his injury was traceable to the "conduct of the defendants creating synthetic crimes." Marshall also argued that he was denied access to the courts. Issues raised for the first time in objections to the magistrate's report are not properly before the district court and are not considered by this Court. **See United States v. Armstrong**, 951 F.2d 626, 630 (5th Cir. 1992).

Marshall also argues for the first time on appeal that he suffered inadequate medical treatment. Even were this Court inclined to credit this unsupported assertion, this Court does not consider issues raised for the first time on appeal. **See United States v. Sherbak**, 950 F.2d 1095, 1101 (5th Cir. 1992).

Marshall did not have standing to bring the lawsuit on his own behalf. His attempt to establish standing by belatedly alleging various injuries will not be considered by this Court. The district court's judgment is affirmed.

AFFIRMED.