

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8139
Conference Calendar

HUBERT ARVIE, Bro.,

Plaintiff-Appellant,

versus

DOYNE BAILEY, Sheriff, Et. Al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-90-CV-642
- - - - -

May 7, 1993

Before REAVLEY, KING, and DAVIS, Circuit Judges.

PER CURIAM:*

Hubert Arvie filed a pro se, in forma pauperis 42 U.S.C. § 1983 complaint alleging that his civil rights were violated when he was arrested in Texas and extradited to Louisiana. The magistrate judge recommended and the district court dismissed the complaint for failure to state a claim for which relief can be granted under Fed. R. Civ. P. 12(b)(6).

Dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is appropriate when, accepting all well-pleaded

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

facts as true and viewing them in the light most favorable to the plaintiff, the plaintiff can prove no set of facts that would entitle him to relief. McCartney v. First City Bank, 970 F.2d 45, 47 (5th Cir. 1992). The court may not look beyond the pleadings to rule on a motion to dismiss. Id. If the court considers material outside the pleadings the motion is treated as a motion for summary judgment and the parties must be given ten days notice and an opportunity to respond. Fed. R. Civ. P. 12(b); Fed. R. Civ. P. 56(c).

In his report and recommendation the magistrate judge referred to page two of the defendant's answer. Arvie argues that this reference suggests that the magistrate judge considered material outside the pleadings to dismiss the complaint. The documentation supporting the magistrate judge's findings that Arvie was arrested pursuant to a "fugitive from justice" warrant and that he received two bond hearings was attached to Arvie's "Motion to Show Defenite [sic] Statement," and therefore properly considered by the magistrate judge in ruling on the motion to dismiss. See Fed. R. Civ. P. 10(c); Neville v. American Republic Ins. Co., 912 F.2d 813, 814 n.1 (5th Cir. 1990) (exhibits attached to a pleading are part of the pleading). The magistrate judge did not consider materials outside the pleadings, and the motion to dismiss was not improperly converted to a motion for summary judgment.

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AFFIRMED; motion to supplement the authority and for service of pleading DENIED.