

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-8681

(Summary Calendar)

LEE ROGER SIMPSON, JR.,

Plaintiff-Appellant,

versus

LARRY PAMPLIN, Sheriff,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(W 92 CA 95)

September 2, 1993

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Lee Roger Simpson, a state prisoner proceeding pro se, brought suit under 42 U.S.C. § 1983 (1988), claiming that Sheriff Larry Pamplin of Falls County, Texas, violated his constitutional rights by arresting him pursuant to an illegal search and seizure. The district court granted summary judgment for Sheriff Pamplin. Finding Simpson's claims more suited to habeas relief, we vacate and remand.

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Simpson alleges that when he was knocking at the door of an apartment he was visiting, Sheriff Pamplin and other law enforcement officials approached him and demanded entry into the apartment. After Simpson told them that he was just visiting, the officials broke into the apartment, whereupon they commenced a search for illegal drugs. Finding such drugs in the apartment, the officials placed Simpson under arrest. See Record on Appeal at 1.

While a pretrial detainee at Falls County Jail, Simpson filed a § 1983 suit against Sheriff Pamplin for arresting him pursuant to an illegal search and seizure. In his complaint, Simpson asked that Sheriff Pamplin be ordered to produce the original search warrant and pay monetary damages. See *id.* at 1-2.

The magistrate judge recommended that the district court dismiss Simpson's suit for failure to state a claim upon which relief may be granted, pursuant to Fed. R. Civ. P. 12(b)(6). Adopting the magistrate judge's recommendation, the district court granted summary judgment for Sheriff Pamplin,¹ from which Simpson filed a timely notice of appeal.

We do not agree with the district court's judgment because the court failed to consider Simpson's obligation to exhaust his state and federal habeas corpus remedies before raising a § 1983 claim. In his § 1983 suit, Simpson attacked the validity of his confinement. See Record on Appeal at 2 (original complaint) ("Sheriff Larry Pamplin then order[ed] his men to search the

¹ Because the district court considered matters outside the complaint, the court ruled upon Sheriff Pamplin's Rule 12(b)(6) motion as if it were a motion for summary judgment. See Fed. R. Civ. P. 12(b).

apartment without proof of a court order or search warrant. Then he took me to jail and then booked me for some drug he sa[id] he found in the apartment."); see also *Hernandez v. Spencer*, 780 F.2d 504, 504-05 (5th Cir. 1986) (construing claims of illegal arrest and illegal search and seizure as attacking validity of confinement). "Where a prisoner's civil rights allegations impinge in part on the validity of his current confinement, he must initially seek relief through habeas proceedings." *Sheppard v. Louisiana Bd. of Parole*, 873 F.2d 761, 762 (5th Cir. 1989); see also *Hernandez*, 780 F.2d at 505 (holding that a state prisoner attacking the validity of his confinement must exhaust both his state and federal habeas corpus remedies).

The record is silent not only as to whether Simpson has exhausted his state and federal habeas corpus remedies, but also regarding the outcome of Simpson's underlying criminal trial.² Accordingly, we VACATE the district court's summary judgment and REMAND for a determination of the status of Simpson's underlying criminal trial and habeas proceedings, and whether in light of those proceedings, the action should be dismissed without prejudice. See, e.g., *Sheppard*, 873 F.2d at 762; *Serio v. Members of Louisiana State Bd. of Pardons*, 821 F.2d 1112, 1119-20 (5th Cir. 1987).

² Simpson states in his brief that his case was set to go to trial on March 2, 1993, in Texas state court. See Brief for Simpson at 1. Sheriff Pamplin, on the other hand, states in his brief that "Simpson was charged in the United States District Court with possession of cocaine." See Brief for Pamplin at 10.

We further DENY as unnecessary at this juncture, Simpson's motion to make a police report part of the record and Sheriff Pamplin's motion to disregard exhibits to Simpson's brief.