

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-9001  
Conference Calendar

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RICKIE LYNN GRAVES,

Plaintiff-Appellant,

versus

GEORGE HANSARD, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:92-CV-232  
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:\*

Rickie Lynn Graves filed this § 1983 action against George Hansard, a Texas district judge, Ricky Smith, district attorney, and Wanda Wray, Graves' court-appointed attorney, seeking \$1 million in damages. The district court dismissed his suit as frivolous under 28 U.S.C. § 1915(d).

Graves alleges that he was charged by Smith with a parole violation of accepting money for services which he did not render, that he pleaded guilty to the charges, and that Judge

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Hansard sentenced him to four years in the Texas Department of Criminal Justice (TCDJ). Graves argues that Smith has abused his position as district attorney by continuing to prosecute him on this matter when he was aware of Judge Hansard's order that this charge not be held against him any further.

A criminal prosecutor is immune from civil suit for damages under § 1983 in presenting the state's case. Imbler v. Pachtman, 424 U.S. 409, 431, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). This applies to the prosecutor's actions in initiating prosecution and carrying the criminal case through the judicial process. Young v. Biggers, 938 F.2d 565, 569 (5th Cir. 1991). Graves is challenging Smith's ability to prosecute him and obtain restitution on charges of taking money without rendering services. This falls within Smith's duties as prosecutor, and the district court properly determined that Smith was entitled to absolute immunity.

Judges are also entitled to absolute immunity from suit under § 1983 for acts taken in their judicial roles. Holloway v. Walker, 765 F.2d 517, 522-23 (5th Cir.), cert. denied, 474 U.S. 1037 (1985). Graves did not allege that Judge Hansard engaged in any actions which would place him outside the scope of judicial immunity. The district court correctly determined that Hansard was entitled to absolute immunity.

Graves' brief does not contain any argument challenging the district court's dismissal of his claims against Wray, and in fact, his brief does not even mention Wray. The district court correctly held that Wray, as Graves' court-appointed counsel, did

not act under color of state law. See Polk County v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981).

The district court did not abuse its discretion in dismissing Graves' claims against these defendants as frivolous under § 1915(d). The claims have no arguable basis in law. See Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992).

AFFIRMED.