

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9040
Conference Calendar

EARNEST RAY WALKER,

Plaintiff-Appellant,

versus

PATRICK BATCHELOR,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:91-CV-2600-T

- - - - -
March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Earnest Ray Walker alleges in this civil rights action that Patrick Batchelor, the District Attorney of Navarro County, Texas, authorized the release of information to a newspaper regarding his arrest and release on bond. He argues that the publicity deprived him of his constitutional right to a fair trial by an impartial jury. The district court treated his complaint as a habeas corpus petition and dismissed the complaint without prejudice for failure to exhaust state court remedies.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Walker argues that the district court should have addressed his valid § 1983 claim.

"[W]here a prisoner's civil rights allegations impinge in part on the validity of his current confinement, he must initially seek relief through habeas corpus proceedings." Sheppard v. State of La. Bd. of Parole, 873 F.2d 761, 762 (5th Cir. 1989 (citing Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117-19 (5th Cir. 1987))). "[W]here factual allegations of a complaint could give rise either to habeas relief or to civil rights remedies, it is settled that the former must be first pursued to a conclusion and that the requirement of exhaustion cannot be evaded by casting the complaint in civil rights form." Hernandez v. Spencer, 780 F.2d 504, 505 (5th Cir. 1986).

Walker's complaint focuses primarily on the validity of his confinement as a result of a unfair trial and secondarily on Batchelor's role in violating his rights. Consequently, Walker must pursue his remedy in habeas corpus. Even if Walker is successful in obtaining habeas corpus relief, he has no right of action against the named defendant because the prosecutor enjoys absolute immunity under § 1983. See Imbler v. Pachtman, 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976).

AFFIRMED.