

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9072
Conference Calendar

EDWARD JAMES BREWER,

Plaintiff-Appellant,

versus

STEVE BARTLETT, Mayor,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CV-1592-T
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Edward James Brewer, a Texas prisoner, filed this § 1983 action against various Dallas County and Texas officials, alleging that the defendants conspired to falsely imprison him in violation of his constitutional rights, and that he was convicted of aggravated robbery as a result of their conspiratorial acts. Brewer also alleged that the defendants conspired to violate his constitutional rights by delaying a ruling on his state habeas application by preventing his legal work from reaching the court.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Construing his complaint as a petition for habeas corpus relief, the district court dismissed his action without prejudice for failure to exhaust state remedies. The court also determined that there was no need to stay the proceedings pending exhaustion because Brewer had failed to allege a cognizable § 1983 claim against any of the defendants. The court dismissed his § 1983 claims as frivolous under 28 U.S.C. § 1915(d).

A § 1915(d) dismissal is reviewed for abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1734, 118 L.Ed.2d 340 (1992). A district court may dismiss an in forma pauperis complaint if it is frivolous, that is, if it lacks an arguable basis in law or in fact. Id.

Judges are entitled to absolute immunity from § 1983 claims arising out of acts performed in the exercise of their judicial functions. Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991). Brewer's claims against Judge Meier are based on his actions as a judge and were properly dismissed as frivolous because they have no arguable basis in law.

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). Brewer's claims against Vance are based on his actions as district attorney of Dallas County in prosecuting Brewer on the robbery conviction. The district court did not abuse its discretion in dismissing

these claims as frivolous because they have no arguable basis in law. His argument that Meier and Vance are not entitled to immunity confuses qualified immunity with absolute immunity and has no merit.

"[A] public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." Polk County v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981). However, state public defenders are not immune from liability under § 1983 for alleged conspiratorial action with state officials. Tower v. Glover, 467 U.S. 914, 923, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984). Brewer's claims against Williamson are based on his actions as his court-appointed attorney. Brewer's allegations of conspiracy between Williamson, Vance, and Meier are conclusional and insufficient to sustain a § 1983 claim. See Arsenaux v. Roberts, 726 F.2d 1022, 1024 (5th Cir. 1984). The district court did not abuse its discretion in dismissing these claims because they have no arguable basis in fact or law.

Brewer's claim against the Clerk of the Court of Criminal Appeals also fails for lack of specific allegations. See Arsenaux, 726 F.2d at 1024. Brewer makes conclusional allegations that the reason his state habeas application has not been ruled on yet is because the Clerk is not filing his legal papers. He alleges no facts to support this claim. This claim has no arguable basis in fact and was properly dismissed as frivolous.

Brewer's claims against the numerous Dallas officials and state officials are based on their positions and not any allegations of personal involvement in the alleged constitutional violations or upon any policy established by these officials. Therefore, they have no personal or official liability. See Bigford v. Taylor, 834 F.2d 1213, 1220 (5th Cir.), cert. denied, 488 U.S. 851 (1988). The district court did not abuse its discretion in dismissing these claims as frivolous because they have no arguable basis in fact or law.

Brewer's claims against the unnamed defendants were properly dismissed because he did not attempt to identify them when given the chance to do so in his answers to the magistrate judge's interrogatories. See Cay v. Estelle, 789 F.2d 318, 322 (5th Cir. 1986).

AFFIRMED.