

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1048  
Conference Calendar

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LESTER EARL PAYTON,

Plaintiff-Appellant,

versus

HENRY WADE, 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-2407-P  
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Lester Earl Payton alleges that the State of Texas failed to provide him with a copy of his indictment before trial. "IFP complaints may be dismissed as frivolous pursuant to § 1915(d) when they seek to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff." Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir.), cert. denied, 493 U.S. 960 (1989). A repetitious § 1983 complaint may be

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

subject to dismissal even when the plaintiff names different defendants than in previous complaints. Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988).

Payton litigated in a 1983 civil rights action the State's failure to provide him with an indictment. In his objections to the magistrate judge's report, Payton attempted to add as defendants several state and federal judges, other court personnel, two current assistant district attorneys, and two practicing attorneys. He accused all of those individuals of conspiring with the named defendants. Payton did not allege facts relating to each individual. All of the facts he did allege relate to his litigation regarding the State's alleged failure to provide him with an indictment. Assuming for the sake of argument that Payton amended his complaint to add new defendants and a conspiracy claim, his failure to add allegations that did not arise from the State's alleged trial error subjected his complaint to dismissal as frivolous.

Payton has prosecuted at least one habeas corpus action and three § 1983 actions regarding the State's alleged failure to provide him with a copy of his indictment before trial. We warn Payton that future filings, particularly frivolous appeals regarding that issue, will make him subject to sanctions. See Fed. R. App. P. 38.

APPEAL DISMISSED. See 5th Cir. R. 42.2.