

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-1178
Summary Calendar

ESEQUIEL RODRIGUEZ,

Plaintiff-Appellant,

versus

U. S. DISTRICT CLERK, and
BETH BROWNING, Deputy Clerk,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas

4:92 CV 260 E

(May 19, 1993)

Before JOLLY, DUHE, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Esequiel Rodriguez, an inmate at the Texas Department of Corrections, filed a complaint pursuant to 42 U.S.C. § 1983 against the United States District Clerk for the Northern District of

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Texas, Fort Worth, and Beth Browning, a deputy clerk. Rodriguez alleged that Browning acted under color of state law to violate his constitutional rights. The district court dismissed Rodriguez's claim as frivolous, and Rodriguez appeals. We find that Browning, a federal employee, was not acting under color of state law and therefore the district court was correct to dismiss Rodriguez's § 1983 action.

I

Rodriguez sought access to lists of the persons who served on the grand juries that indicted him. Browning, an employee of the United States District Court, informed Rodriguez that the grand jury lists are not public records and therefore were not available to him. Rodriguez then filed a pro se complaint against Browning pursuant to 42 U.S.C. § 1983. Rodriguez alleged that Browning had acted under color of state law and had violated his constitutional rights by not providing him with the grand jury lists.

On April 8, 1992, the magistrate judge granted Rodriguez leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). The district court, however, dismissed Rodriguez's complaint sua sponte after determining that it failed to state any grounds for liability whatsoever. The district court noted that all records relating to the proceedings of a grand jury are sealed and kept secret and are not accessible to the general public, and access to such grand jury records is controlled by Rule 6 of the Federal Rules of Criminal Procedure. The district court found that Rodriguez made no showing

or alleged any facts to lead to the conclusion that he was entitled to the records he requested, and a letter to the district clerk's office did not comply with the process for gaining access to these records set out in Rule 6. The district court therefore found that Rodriguez's claim had no chance of ultimate success and had no arguable basis in law or fact and dismissed it pursuant to 28 U.S.C. § 1915(d) on November 19, 1992.

II

Before addressing the merits of Rodriguez's claim, we point out that this is not a habeas corpus proceeding. In his complaint filed in the district court, Rodriguez does not attack his conviction and seek to have it set aside because of the composition of the grand jury that indicted him. Furthermore, this is not a petition for disclosure of the grand jury lists, and in his complaint Rodriguez does not state any reason that he should be given access to the grand jury lists pursuant to Rule 6.

To the contrary, Rodriguez's claim is a § 1983 action against a federal officer for refusing to provide him with lists of the grand jury members. Rodriguez is attempting to hold Browning liable for \$1,000,000.00 for refusing to provide him with this information. We affirm the decision of the district court dismissing Rodriguez's complaint, but do so because Browning is a federal employee who acted pursuant to a federal rule, and therefore there is no state action and, accordingly, no § 1983

claim.¹ The district court properly dismissed Rodriguez's case, and therefore the judgment is

A F F I R M E D.

¹A pleading that raises a § 1983 claim must allege that someone violated a right that the Constitution or laws of the United States secures and that the offender did so under color of state law. Auster Oil & Gas, Inc. v. Stream, 764 F2d 381, 386-87 (5th Cir. 1985).