

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1205

Summary Calendar

HERBERT PAUL DANIELS,

Plaintiff-Appellant,

versus

JIM BOWLES, Sheriff of
Dallas County, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:92 CV 1989 T)

July 23, 1993

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Herbert Daniels was confined in the Dallas County Jail. He sued Dallas County Sheriff Jim Bowles and later sued Parole Officer Salome Austin and Parole Officer Jimmie Cromer. The magistrate judge treated the two suits as one.

Daniels alleged that he was jailed in Dallas County on January 14, 1992, for aggravated-assault and acquitted on March 12, 1992;

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that on April 17, 1992, he "discharged [his] parole [for another conviction] legally" and at his parole revocation hearing on April 28, the hearing officer found no reason to hold him. Daniels was not released, however, but was placed in another tank in the Old County Jail, he says. There, on or about May 10, 1992, he alleged, he was severely beaten by other inmates. He was released from the jail about five days later.

He sued Bowles for money and also requested relief from overcrowding and maximum custody for persons convicted of aggravated crimes. He did not allege how Sheriff Bowles may have been responsible for his injuries.

In his second complaint, Daniels alleged that Parole Officer Cromer did not set his parole revocation hearing until 11 days after his discharge date. Daniels apparently blames Cromer's inaction for the beating he received. He did not allege how Supervisor Austin may have been implicated. Daniels sued for money and requested that all persons associated with his unnecessarily lengthy jailing be fired.

The magistrate judge recommended dismissal of the action as frivolous under 28 U.S.C. § 1915(d). He reasoned that Bowles and Austin "cannot be held responsible for the alleged acts or omissions of their subordinates." The magistrate judge concluded further that at most, Daniels stated a claim for negligence against Cromer, which is not actionable under § 1983.

Daniels filed a "formal notice of appeal," which the court treated as objections to the magistrate judge's report. He

asserted that "[i]f negligence by officer Cromer to take necessary action to release plaintiff would not have taken place plaintiff would have avoided the brutal beating suffered." He made no reference to Bowles or Austin.

This court reviews § 1915(d) dismissal for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). "A complaint may be dismissed as frivolous [on authority of § 1915(d)] if it lacks an arguable basis in fact and law." Id.

Daniels contends that Sheriff Bowles is liable to him because he "was instrumental in the actual physical confinement and this rendered [him] vulnerable to having [his] life endangered." He asserts that "Section 1983 gives a remedy against prison officials whose negligent acts result in injury to a prisoner." The Supreme Court has held, however, that "where a government official is merely negligent in causing the injury, no procedure for compensation is constitutionally required," i.e., there is no cause of action for a violation of the Due Process Clause under § 1983. Davidson v. Cannon, 474 U.S. 344, 347, 106 S.Ct. 668, 88 L.Ed.2d 677 (1986). Furthermore, Daniels' claim against Bowles is frivolous because there is no showing that he was in any way involved in the alleged beating. The § 1983 plaintiff must allege and prove a causal connection between the defendant's action or omission and the constitutional violation. Young v. City of Killeen, Texas, 775 F.2d 1349, 1352 (5th Cir. 1985); Sims v. Adams, 537 F.2d 829, 831 (5th Cir. 1976).

Daniels asserts that he is entitled to relief on grounds that he was charged as a parole violator on the basis of a criminal charge on which he was acquitted. He argues that the responsibility for this lies with the three appellees due to their negligence. Daniels's contention is frivolous because Daniels was not acquitted on the criminal charge until after he was charged and confined as a parole violator, and the appellees could not have known that he would be acquitted on the criminal charge. Thus, Daniels had no right not to be charged as a parole violator, such as would be actionable under § 1983. See Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), overruled on another point, Daniels v. Williams, 474 U.S. 327, 329-32, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

Daniels asserts that Cromer and Supervisor Austin "acted recklessly" because they "were informed on numerous [occasions] by phone calls from [his] mother Ella V. Daniels and Rita Shropshire." This is raised for the first time on appeal and such issues "are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985). We will not consider this late assertion.

AFFIRMED.