

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1480
Summary Calendar

EDWARD CHARLES CROCKETT,

Plaintiff-Appellant,

VERSUS

DON CARPENTER,
Tarrant County Sheriff,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(4:91-CV-837-K)

(April 5, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Edward Crockett appeals the dismissal, for failure to state a claim pursuant to FED. R. CIV. P. 12(b)(6), of his state prisoner's civil rights action brought pursuant to 42 U.S.C. § 1983. Finding no reversible error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Crockett alleged that he was denied access to a law library between April 29 and October 1, 1990 and that the delay caused "a back log to my legal research." The defendant sheriff filed a motion to dismiss and/or for summary judgment.

Crockett filed a motion for leave to file a petition for habeas corpus relief, alleging that, because of the denial of access to the court, he was unable to file proper pleadings on time, resulting in the affirmance of his conviction and denial of discretionary review. Crockett subsequently filed a motion to withdraw his habeas petition, which was granted. The district court erroneously dismissed the entire case at the time of dismissing the habeas petition but subsequently reinstated the § 1983 claim.

Crockett also filed pleadings entitled "Proposed Finding of Facts" and "Conclusions of Law" in which he asserted that the law-library personnel did not give him meaningful assistance in pursuing his habeas and civil rights actions and that he had only limited access to the law library after being transferred to the main jail. Crockett also alleged that the library was inadequate because it did not contain the Federal Supplement or trained legal assistants.

The district court granted the defendant's motion to dismiss, determining that Crockett failed to make specific factual allegations to support his denial-of-access-to-the-courts claim and that Crockett had not exhausted his state-law remedies. The order of

dismissal was entered February 2, 1993. The district court granted Crockett's motion for extension of time on May 4, 1993, allowing him to file a notice of appeal by May 7; Crockett filed a notice of appeal on May 17. The notice is dated May 5, but a copy of the postmark on the mailing envelope displays the date of May 12.

II.

The defendant argues that Crockett's notice of appeal filed on May 17, 1993, was not filed timely. A notice of appeal in a civil case must be filed within thirty days after entry of the judgment appealed from. FED. R. APP. P. 4(a)(1). "The notice of appeal requirement may be satisfied by any statement, made either to the district court or the Court of Appeals, that clearly evinces the party's intent to appeal." Page v. Delaune, 837 F.2d 233, 236-37 (5th Cir. 1988) (citation omitted). Crockett's motion for an extension of time to file an appeal, filed on February 26, 1993, evinced an intent to appeal and was filed within thirty days of entry of the judgment on February 2, 1993. Therefore, Crockett's notice of appeal was timely.

III.

The district court dismissed Crockett's complaint in part because of Crockett's failure to exhaust his state-law remedies. The defendant argues that the complaint is a collateral attack on Crockett's conviction and, therefore, that Crockett was required initially to exhaust his state habeas claims.

Generally, a plaintiff who files a § 1983 action that directly or indirectly challenges the validity of his conviction must initially pursue his habeas remedies. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117 (5th Cir. 1987). The exhaustion requirement "is based on the comity-inspired principle that state courts should be given first opportunity to rule on the merits of a prisoner's claim attacking the constitutionality of the fact or duration of his incarceration." Id. at 1114 (citation omitted). If a § 1983 claim may be dismissed without resolution of the underlying merits of the state claim, however, there is no threat to the principles of comity, and it is not necessary to defer the disposition of the § 1983 claim. Id. at 1115.

The resolution of Crockett's § 1983 denial-of-access-to-the-courts claim has no bearing on the state's resolution of the validity of his conviction. Therefore, the district court erred in determining that Crockett was required to exhaust his habeas remedies. The error is not cause for reversal because, as will be discussed, the dismissal can be affirmed because the pleadings do not state a constitutional violation. See United States v. Tello, 9 F.3d 1119, 1128 (5th Cir. 1993) (affirmance based upon reason other than that relied upon by district court).

IV.

Crockett argues that he was denied access to the law library between April 29 and October 1990 in violation of the Fourteenth Amendment. He avers that he could have assisted his counsel in

preparing for his criminal trial and appeal if he had had access. Crockett also says that he did not have sufficient library time to prepare his petition for discretionary review of his state-court conviction and that it was denied as untimely.

This court reviews de novo a dismissal for failure to state a claim upon which relief can be granted. Giddings v. Chandler, 979 F.2d 1104, 1106 (5th Cir. 1992). The dismissal may be upheld "only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." Id. (internal quotation and citation omitted). "In making this determination, [the court] accept[s] the well-pleaded allegations in a complaint as true." Id. (citation omitted).

Prisoners have a constitutionally protected right of access to the courts. Bounds v. Smith, 430 U.S. 817, 821 (1977). "While the precise contours of a prisoner's right of access to the courts remain somewhat obscure, the Supreme Court has not extended this right to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court." Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993) (footnote omitted), cert. denied, 114 S. Ct. 1081 (1994). To prevail on a denial-of-access-to-the-courts claim, the plaintiff must show that he was prejudiced by the alleged violation. Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, 112 S. Ct. 2974 (1992).

In his original complaint, Crockett alleged that his lack of access to the law library for a six-month period resulted in a backlog of his legal work and prayed for a reversal of his criminal

conviction. Crockett's initial complaint did not allege that he suffered any specific prejudice during the course of his criminal prosecution as a result of his lack of access to a law library.

Crockett subsequently alleged in his proposed conclusions of the law, however, that his petition for discretionary review to the state appellate court was dismissed as untimely because he did not have access to a paralegal or the opportunity to go to the library. As the filings of a pro se litigant, Crockett's pleadings are entitled to a liberal construction. See Rodriguez v. Holmes, 963 F.2d 799, 801 (5th Cir. 1992). Accordingly, Crockett's proposed conclusions should have been construed as an amendment to his complaint. See Sherman v. Hallbauer, 455 F.2d 1236, 1242 (5th Cir. 1972) (memorandum in opposition to motion for summary judgment raised new allegation and should have been construed as an amendment to the complaint).

Crockett attached exhibits to his motion for leave to file a habeas petition that reflect that he was represented by counsel during his criminal trial and on direct appeal. Crockett also attached a document indicating that counsel was representing him at the time his petition for discretionary review was denied. Although Crockett subsequently withdrew his habeas petition, these documents remained filed in the record and are relevant to a determination whether Crockett has stated a claim for relief. It is in the interest of justice and judicial economy to consider these documents as amendments to the complaint, in reviewing the action of the district court. Further, Crockett's statement in his

brief that he was acting as "co-counsel" during his appeal indicates that counsel continued to represent him during the appeal period.

Because Crockett was represented by counsel who was able to file pleadings on his behalf, Crockett was not denied access to the courts with respect to the appeal of his criminal conviction. See Tarter v. Hury, 646 F.2d 1010, 1014 (5th Cir. 1981) (stating that if a criminal defendant is represented by counsel who can present matters to the court on his behalf, he is not denied access to the court).

Crockett also argues that he was denied his Sixth Amendment rights because the law library personnel refused to provide him assistance after he was transferred to the main jail. Crockett contends that he was permitted access to the law library only once or twice a week for an hour and a half after he was transferred. Crockett also claims that the library was inadequate because it did not have the Federal Supplement. He reasons that he was injured because he had no legal assistance in researching his civil rights and habeas claims.

Crockett raised these claims in his proposed findings of fact and conclusions of law. These pleadings also should have been liberally construed as amendments to his complaint. Sherman, 455 F.2d at 1242.

Although Crockett alleges generally that he required further assistance to pursue his civil rights actions and habeas petitions, he did not allege any specific prejudice in a particular action

resulting from the lack of assistance, his limited library time, or his lack of access to the Federal Supplement. In the absence of an allegation of prejudice, the district court did not err in dismissing Crockett's denial-of-access-to-the-courts claim pursuant to rule 12(b)(6). Henthorn, 955 F.2d at 351.

Crockett attached exhibits to his brief reflecting the dismissal of other actions he had filed and the denial of his petition for habeas relief by the state trial court. Crockett argues that he would have been successful in these proceedings if he had had proper access to the courts and proper paralegal assistance. But we do not consider factual evidence that was not presented to the district court. See United States v. Flores, 887 F.2d 543, 546 (5th Cir. 1989) (holding that this court will not ordinarily enlarge the record on appeal to include matters not presented to the district court).

AFFIRMED.