

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1764
Conference Calendar

ROBERT PETER RUSSELL,

Plaintiff-Appellant,

versus

DEBORA BELTON,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-0803-X
- - - - -
(October 29, 1993)

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

PER CURIAM:*

Robert Peter Russell was convicted of the first-degree murder of his wife, an Officer in the United States Marine Corps, in the United States District Court for the Eastern District of Virginia. See United States v. Russell, 971 F.2d 1098 (4th Cir. 1992), cert. denied, 113 S.Ct. 1013 (1993). Russell filed the suit *sub judice* pursuant to 42 U.S.C. §1983 against his former sister-in-law, Debora Belton, alleging that Belton conspired with the Government to convict him of uxoricide. Russell alleges that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

he was sentenced to life imprisonment as a result of Belton's perjured testimony.

Russell sought a declaratory judgment stating that Belton "violated his rights, privileges and immunities secured by the U.S. Constitution." Russell also sought habeas corpus relief, compensatory damages of \$10 million dollars, punitive damages of \$10 million dollars, and injunctive relief "to deter any future negligence[] by defendants." Finally, Russell sought "special damages" including: attorney's fees, acceptance of responsibility by Belton, and a reunion with his family.

The district court dismissed Russell's suit as frivolous pursuant to 28 U.S.C. § 1915(d). A complaint filed in forma pauperis can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint "is frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (citing Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). This Court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

Belton enjoys absolute immunity from suit for damages for injury which resulted from her allegedly perjured testimony. Briscoe v. LaHue, 460 U.S. 325, 329-34, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983); Young v. Biggers, 938 F.2d 565, 569 (5th Cir. 1991), cert. denied, 112 S.Ct. 1485 (1992). Russell's habeas corpus claims should be raised in the court in which he was sentenced. 28 U.S.C. § 2255. The declaratory relief Russell

sought (including acceptance of responsibility by Belton) and the possibility of a reunion with his family will necessarily be determined by the outcome of the § 2255 proceeding.

Russell's claim for injunctive relief "to deter any future negligence[] by defendants" is vague, uncertain, and so far beyond the equity powers of the Court that it is absurd.

The district court did not abuse its discretion dismissing this suit as frivolous because it lacks an arguable basis in law. See Denton, 112 S.Ct. at 1733-34. The appeal from the dismissal raises no issue of arguable merit and is therefore frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.