UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2361
Summary Calendar

JEFFERY HOZDISH,

Plaintiff-Appellant,

versus

KATHERINE TYRA and
JENNIFER SLESSINGER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-24)

(December 2, 1993)

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

PER CURIAM:[*]

Jeffery Hozdish appeals the 28 U.S.C. § 1915(d) dismissal of his *in forma pauperis*, *pro se* civil rights complaint that the Harris County, Texas district clerk and court reporter unconstitutionally denied him a free copy of the record of his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

criminal proceedings and failed to include particular items therein. We affirm.

Background

Hozdish pleaded *nolo contendere* to three state counts of aggravated sexual assault on his children and was sentenced to three concurrent 50-year terms of imprisonment. He unsuccessfully appealed his conviction and was similarly unsuccessful in two state applications for habeas relief. We recently affirmed the rejection of a federal habeas petition in which he claimed that he had discovered new evidence.[1]

The instant section 1983 action is based on the refusal of Katherine Tyra, the Harris County district clerk, and Jennifer Slessinger, the court reporter for the state district court, to provide Hozdish with a free copy of the transcript of his state court criminal proceeding and to include therein certain items. Hozdish opines that if that record were produced he would find the "new evidence" needed to support his thus far unsuccessful habeas petitions.

The district court dismissed the civil rights suit as frivolous under 28 U.S.C. § 1915, finding that Hozdish failed to

[1]The "new evidence" ostensibly is composed of several letters written in 1988 by his children, the victims of his sexual assaults, indicating that they did not want to testify against him. Hozdish has directed numerous requests for information relating to these letters to the state child protective services office and filed several motions with the state district court and has been told either that those records are sealed or that they do not exist.

allege deprivation of a federal right. Noting multiple prior civil rights filings, the trial court assessed a sanction of $75 and directed the district clerk to refuse any further filings from Hozdish until that sanction is paid. Hozdish timely appealed.

Analysis

A district court may dismiss an *in forma pauperis* complaint as frivolous if it lacks an arguable basis in fact or law.[2] We review section 1915(d) dismissals with deference, reversing only for an abuse of discretion.[3]

To be valid, a section 1983 complaint must assert deprivation of a right secured by the Constitution or federal laws.[4] Hozdish asserts that the clerk and court reporter's denial of a free transcript deprived him of equal protection and due process rights. This contention has no legal basis. There is no constitutional mandate that one pursuing post-conviction collateral relief must be provided a free copy of his state court criminal trial record.[5]

Hozdish also maintains that the clerk and court reporter denied him access to the courts by failing to include certain letters from his children in the record. For this claim to succeed Hozdish must show legal prejudice.[6] He cannot establish such.

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[2]**Denton v. Hernandez**, _____ U.S. _____, 112 S.Ct. 1728 (1992).

[3]**Moore v. Mabus**, 976 F.2d 268 (5th Cir. 1992).

[4]**Evans v. City of Marlin, Tx.**, 986 F.2d 104 (5th Cir. 1993).

[5]**Smith v. Beto**, 472 F.2d 164 (5th Cir. 1973).

[6]**Brewer v. Wilkinson**, 3 F.3d 816 (5th Cir. 1993).

Even if Hozdish presented evidence that his victims did not want to testify at trial that would not undermine his conviction on the *nolo contendere* plea which has been found to be validly entered. Hozdish cannot make the requisite showing of legal prejudice.

Hozdish raises several contentions for the first time on appeal. They were not presented to the trial court; we may not consider them.[7]

Hozdish appeals the sanction imposed by the district court. He has filed numerous frivolous actions and previously has been warned. The district court's sanction is appropriate.[8]

Hozdish separately moves for discovery and alleges error in the dismissal of his section 1983 suit prior to either discovery or an evidentiary hearing. No constitutional violation has been alleged and neither a hearing nor discovery could yield a legally cognizable claim. The motions are denied, as is the motion to consolidate this appeal with the now concluded appeal on the habeas petition.

Motions DENIED; dismissal AFFIRMED.

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[7]**Beck v. Lynaugh**, 842 F.2d 759 (5th Cir. 1988).

[8]See **Smith v. McCleod**, 946 F.2d 417 (5th Cir. 1991).