IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2495
Conference Calendar

ABBAS ALI a/k/a DARIUS DURON ELAM, MANSOUR SHABAZZ a/k/a JAMES D. HARRIS, JOHN LEE VIGES a/k/a YAHYA SHABAZZ, EARL SILAS BINGLEY,

Plaintiffs-Appellants,

versus

ARKBAR SHABAZZ, ETC. ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA H 93 677
- - - - - - - - - -
(October 28, 1993)

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

PER CURIAM:*

Darius Elam, James Harris, John Viges, and Earl Silas Bingley are prisoners in the custody of the State of Texas who practice the religion of Islam. They filed a pro se, in forma pauperis complaint alleging that Chaplain Arkbar Shabazz and Head Chaplain Emmett Solomon conspired to deprive them of their First Amendment right to freedom of religion. The plaintiffs brought

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

their claim under 18 U.S.C. §§ 241 and 242.

The appellants argue that the district court erred in characterizing their cause of action as one brought for equitable relief under 42 U.S.C. § 1983. Unequivocally, the appellants state that their complaint alleges a criminal conspiracy to deprive them of their constitutional rights under the First and Eighth Amendments without due process in violation of 18 U.S.C. §§ 241 and 242. They argue that they are not precluded from petitioning the district court to prosecute Shabazz and Solomon for their § 1983 violations.

The argument is unavailing. The appellants may not seek Shabazz and Solomon's prosecution under the criminal conspiracy statutes. "Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor's discretion." United States v. Batchelder, 442 U.S. 114, 124, 99 S.Ct. 2198, 60 L.Ed.2d 755 (1979).

Even if the claim is liberally construed as an attempt to bring a private cause of action under federal criminal statutes, their argument fails. In order for a private right of action to exist under a criminal statute, there must be "a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone." Cort v. Ash, 422 U.S. 66, 79, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). Nothing in sections 241 or 242 indicates that they are more than "bare criminal statute[s]." Id. at 79-80. Thus, the statutes do not provide for a private right of action; and corrective process under them "would lie entirely within the discretion of a governmental body, the United States

Department of Justice." See Johnson v. Kegans, 870 F.2d 992, 1005 n.4 (5th Cir.), cert. denied, 492 U.S. 921 (1989) (Goldberg, J., dissenting); see also Beyah v. Scully, 1992 WL 51564, *4 (S.D.N.Y., Mar. 13, 1992) (No. 91 Civ. 2720).

The appellants' claim has no arguable basis in law and fact. The district court, albeit for different reasons, did not abuse its discretion in dismissing the claim as frivolous. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992); see also Lavespere v. Niagara Mach. & Tool Works, Inc., 920 F.2d 259, 262 (5th Cir. 1990), cert. denied, 62 U.S.L.W. 3248 (U.S. Oct. 4, 1993).

AFFIRMED.