

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3634
Conference Calendar

WILEY FRED FOLEY,

Plaintiff-Appellant,

versus

HARRY J. CONNICK,
District Attorney, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-1882-J-1
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Wiley Fred Foley, a prisoner in the Louisiana State Penitentiary filed a civil action seeking documents in order to allow him to attack his conviction for aggravated rape. A § 1983 action is the appropriate remedy for recovering damages for mistreatment or illegal administrative procedures. Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact of confinement. Preiser v. Rodriguez, 411

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); see also Deters v. Collins, 985 F.2d 789, 792-96 (5th Cir. 1993). If a complaint contains both habeas and § 1983 claims, the district court should if possible, separate the claims and decide the § 1983 claims. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987).

Although Foley vigorously argues that he was not seeking to overturn his conviction in this pleading, he is seeking documents to attempt to undermine the constitutionality of his conviction and is asserting that his conviction was unconstitutional in order to justify his request. This claim serves as a challenge to the legality of his confinement and must first be brought as a habeas action. See Serio, 821 F.2d at 1119.

Foley also argues that the district court erred in dismissing his civil rights action as frivolous. A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A complaint may be dismissed as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)). Section 1915(d) authorizes the piercing of "the veil of the complaint's factual allegations if they are clearly baseless." Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Although Foley has named four defendants in his quest for production of documents, he has not stated either in his original complaint or on appeal why the district attorney, clerk of court,

or court reporter are implicated in the suit. In his complaint, Foley asserts that Judge Shea improperly denied his motion for production of documents on two occasions. Even though Foley frames his complaint in terms of a writ of mandamus, stripped of this disguise, the action is one seeking to overturn Judge Shea's denial of his motions for production of the documents in state court. "[L]itigants may not obtain review of state court actions by filing complaints about those actions in . . . federal courts cast in the form of civil rights suits." Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986) (internal quotations and citation omitted). In Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986), this Court held that "[j]udicial errors committed in state courts are for correction in the state court systems, at the head of which stands the United States Supreme Court; such errors are no business of ours." Additionally, as correctly noted by the district court federal courts have no power to grant writs of mandamus against state court officials. See Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973). The district court did not abuse its discretion in dismissing without prejudice Foley's civil rights claims as frivolous.

AFFIRMED.