

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4075
Summary Calendar

RAYMOND FLOYD ALLIEN,

Plaintiff-Appellant,

versus

WAYNE MCGUFFEE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana
(92-CV-1995)

May 31, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Raymond Floyd Allien, *pro se* and *in forma pauperis*, appeals from the judgment dismissing, without prejudice, his claims for habeas relief, and staying his civil rights claims pending exhaustion of state remedies. We **MODIFY** the judgment, and **AFFIRM** it as modified.

I.

Allien, a Louisiana state prisoner, filed a 42 U.S.C. § 1983 complaint against numerous state public officials and several

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

private individuals, asserting numerous constitutional and civil rights violations stemming from an alleged conspiracy to convict and imprison him on false charges of forcible rape. Allien also asserted numerous incidents and conditions of unconstitutional confinement while awaiting trial. He alleged that such pretrial treatment was intended to force a confession from him. He further alleged that his false conviction and unconstitutional treatment were "in direct relation to an ongoing ploy of revenge in which [his] ex-wife ... conspired to get legal custody of their two (2) daughters".

Allien asserted ten separate claims for relief, including seeking a court order "dismissing, abandoning, vacating, overturning, make [sic] null and void" his conviction. He requested \$15 million in damages, an investigation into criminal cases held in LaSalle Parish Court in the last two years, and removal of six of the defendants from public office. He also requested that each defendant be criminally charged for malfeasance of office and miscarriage of justice, and requested a restraining order against any acts of vengeance on the part of the defendants.

The magistrate judge reported that Allien's civil rights complaint contained claims challenging the fact and duration of his confinement and, therefore, such claims should have been presented in a habeas application. The magistrate judge further found that the civil rights and habeas claims were so intertwined that they could not be separated, and recommended dismissing the habeas claims without prejudice for failure to exhaust state remedies, and

staying the § 1983 claims pending exhaustion of all state and federal habeas proceedings. Over Allien's objections, the district court adopted the recommendation, dismissing without prejudice the habeas claims, and staying the civil rights claims pending exhaustion only of state remedies.

II.

A.

Allien admits that he inadvertently filed habeas and civil rights claims in one petition. However, he requests that we separate his claims and allow him to proceed with his civil rights claim of cruel and unusual punishment stemming from unconstitutional treatment during his pretrial confinement.

"[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." **Preiser v. Rodriguez**, 411 U.S. 475, 500 (1973). On the other hand, a § 1983 action is the appropriate remedy for a state prisoner seeking to recover damages for mistreatment or for illegal administrative procedures. **Richardson v. Fleming**, 651 F.2d 366, 372 (5th Cir. 1981). To determine which remedy a prisoner should pursue, we "must examine the basis of the complaint and determine whether the claim, if proven, would factually undermine or conflict with validity of the state court conviction which resulted in the prisoner's confinement". **Id.** at 373. If a complaint contains habeas claims and claims that can

properly be pursued initially under § 1983, and those claims can be separated, the district court "should do so, entertaining the § 1983 claims". ***Serio v. Members of La. State Bd. of Pardons***, 821 F.2d 1112, 1119 (5th Cir. 1987).

In district court, Allien acknowledged that his civil rights claims of unconstitutional treatment and his habeas claims challenging the constitutionality of his conviction overlap. On appeal, he continues to intertwine his claims, repeating accusations of criminal conduct by the defendants to falsely accuse and convict him of forcible rape. He also contends that some of the incidents of unconstitutional treatment during his pretrial confinement prevented him from calling witnesses to aid him at trial, and that other incidents were attempts to force a confession from him. He contends that the trial judge and other defendants purposefully placed friends and relatives on the jury to aid in falsely convicting him. In a separate document filed with this court, entitled "Memorandum in Support of Eighth Amendment of the United States Constitution Violations of Cruel and Unusual Punishment", Allien asserts that one of the motives for the defendants' unconstitutional treatment was "to beat a confession out of [him]". Finally, Allien filed with this court a "petition" requesting warrants for the arrest of certain defendants for various criminal offenses related to their participation in his trial. Such allegations more than confirm that Allien's civil rights claims are so inextricably intertwined with his habeas claims that they cannot be separated. ***Serio***, 821 F.2d at 1119.

Accordingly, the district court properly dismissed without prejudice Allien's habeas claims and stayed his civil rights claims.

B.

Although the magistrate judge recommended staying Allien's civil rights claims pending the exhaustion of both state and federal habeas remedies, the district court's judgment refers only to exhaustion of *state* habeas remedies. Because Allien must exhaust federal habeas remedies, as well, before pursuing § 1983 relief, the district court's judgment is modified to reflect that Allien's civil rights claims are stayed pending exhaustion of all state and federal habeas remedies.²

III.

The judgment, as **MODIFIED**, is **AFFIRMED**.

MODIFIED and AFFIRMED

² We do not have jurisdiction to consider Allien's separate "Motion for Default Judgement", which is based on the failure of many of the defendants to file appellate briefs responding to his allegations on appeal. Only district courts can grant such judgments. See *generally* Fed. R. Civ. P. 1; Fed. R. Civ. P. 55.