

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4221
Summary Calendar

STEPHEN W. JEFFRIES,

Plaintiff-Appellant,

VERSUS

GRAYSON COUNTY, TEXAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(4:92-CV133)

(January 21, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Jeffries appeals the dismissal of his § 1983 action. We affirm.

I.

Officer Charles Gonzales stopped Stephen W. Jeffries and issued him two traffic citations for speeding and operating a motor vehicle without liability insurance. Justice of the Peace Frank

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jolls executed two complaints charging him with these offenses, and Jeffries was served notice of a trial date. Jeffries, acting **pro se**, demanded a jury trial and a six-member jury was impaneled. The jury found him guilty on both charges and assessed him fines of \$350.

Jeffries refused to pay the fines, and Judge Jolls conducted an indigency hearing. Jeffries completed a portion of the "Declaration of Financial Inability to Post Bond or Pay Fine in Class C Misdemeanor Case" but then became "belligerent" and refused to sign the form. From the completed portion of the form Judge Jolls determined that Jeffries was not indigent but simply refused to pay the fine. Judge Jolls signed an Order of Commitment requiring Jeffries to serve out his fine in jail at a rate of \$50 per day. Jeffries was transferred to the city jail of the City of Whitesboro where he served five days of his seven-day sentence. He was released early because it was the holidays, and he had exhibited good behavior.

Jeffries filed a civil rights complaint against the City of Whitesboro, Grayson County, Judge Jolls, Officer Gonzales, District Attorney Kelly F. Schurr, and Whitesboro Chief of Police Larry Macomber. In his complaint and his more definite statement, Jeffries challenged the circumstances of his arrest, prosecution, and subsequent incarceration, and also challenged the conditions of his confinement in the city jail. The district court granted the defendants' motions for summary judgment and dismissed the complaint with prejudice.

II.

This court reviews the district court's grant of summary judgment **de novo**. **Weyant v. Acceptance Ins. Co.**, 917 F.2d 209, 212 (5th Cir. 1990). Summary judgment is appropriate when, considering all of the facts in the pleadings, depositions, admissions, answers to interrogatories, and affidavits and drawing all inferences in the light most favorable to the nonmoving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. **Newel v. Oxford Management, Inc.**, 912 F.2d 793, 795 (5th Cir. 1990).

The moving party has the burden to produce evidence showing the absence of a genuine issue of material fact. **Celotex v. Cattrett**, 477 U.S. 317, 106 S.Ct. 2548 (1986). Once the moving party has met this burden, the nonmovant must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). If the nonmovant fails to set forth specific facts in support of allegations essential to that party's claim and on which that party bears the burden of proof, then summary judgment is appropriate. **Celotex**, 477 U.S. at ___, 106 S.Ct. at 2552-53.

Judge Jolls and Assistant District Attorney Schurr

The district court granted summary judgment for Judge Jolls and Assistant District Attorney Schurr based on absolute immunity. Judicial officers and prosecutors are entitled to absolute immunity from damage claims arising out of acts performed in the exercise of their official duties. **See Graves v. Hampton**, 1 F.3d 315, 317-18 (5th Cir. 1993). To the extent that Jeffries alleges that Judge

Jolls and Schurr violated his civil rights, they were acting within the scope of their official duties and are entitled to absolute immunity.

Officer Gonzales

It is unclear on what basis Jeffries challenges the district court's judgment in favor of Gonzales. The undisputed summary judgment evidence established that Gonzales had probable cause to stop Jeffries for speeding and properly issued him two traffic citations. To obtain relief under section 1983 a plaintiff must prove that he was deprived of a constitutional right or a federal statutory right and that the person depriving him of that right acted under color of state law. **See Resident Council of Allen Parkway Village v. U.S. Dep't of Housing & Urban Dev.**, 980 F.2d 1043, 1050 (5th Cir.), **cert. denied**, 114 S.Ct. 75 (1993). Jeffries has failed to demonstrate that Gonzales violated Jeffries's constitutional rights, and the district court properly dismissed the claims against Gonzales.

Chief of Police Macomber

The claims against Macomber appear to arise from Jeffries's commitment to the City of Whitesboro jail following his trial and subsequent refusal to pay the assessed fine, and the conditions of his confinement during his commitment. Macomber took custody of Jeffries pursuant to an order of commitment signed by Judge Jolls in compliance with Texas state law. Tex. Crim. Proc. Code Ann. art. 43.09 (West 1991). Jeffries has not alleged a cognizable constitutional claim.

Jeffries argued below that Macomber violated his Eighth Amendment rights. However, on appeal he gave a description of the conditions of confinement but failed to brief how the district court's disposition of the claim was incorrect. Issues raised but not briefed are considered abandoned. **See Yohey v. Collins**, 985 F.2d 222, 224-25 (5th Cir. 1993). This issue has been abandoned on appeal.

Municipal Liability

Jeffries also sought monetary damages against Grayson County and the City of Whitesboro. Municipalities are liable for damages under section 1983 only when an official policy or governmental custom of the municipality causes a constitutional violation. **Colle v. Brazos County, Tex**, 981 F.2d 237, 244 (5th Cir. 1993). Jeffries does not allege that any Grayson County employees were responsible for any of his alleged constitutional violations and therefore cannot state a cognizable claim against the county. To the extent that the City of Whitesboro might have been liable for the acts of Macomber, as discussed above, Jeffries has not demonstrated that Macomber violated Jeffries's constitutional rights. The district court properly dismissed the claims against Grayson County and the City of Whitesboro.

AFFIRMED.