UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5081
Summary Calendar

JACKIE VANCE LOWREY,

Plaintiff-Appellant,

VERSUS

COLLIN COUNTY SHERIFF'S DEPARTMENT, ET AL.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas

(4:93-CV-127)

(January 26, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:[*]

BACKGROUND

On May 28, 1993, Jackie Vance Lowrey filed this 42 U.S.C. § 1983 suit against the Collin County Sheriff's Department, the Texas Board of Pardons and Parole, and Robert Burns, Lowrey's defense attorney. Lowrey alleged the following in his complaint.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

On July 7, 1992, Gail Cawthorn, an employee of the Texas Board of Pardons and Paroles, called Lowrey into her office to make a monthly parole report. When Lowrey arrived at Cawthorn's office, he was arrested pursuant to a "blue warrant"[1] by a warrant officer named Smith, who was an employee of the Collin County Sheriff's Department. The "blue warrant" was issued by the Texas Board of Pardons and Paroles in relation to a driving-while-intoxicated charge. Lowrey alleged that the "blue warrant" was invalid and that the actions of the Sheriff's Department and the Board of Pardons and Paroles caused him to be unlawfully arrested and falsely imprisoned.

Lowrey also alleged that his defense attorney, Robert Burns, caused him to be unlawfully imprisoned and falsely arrested by filing a frivolous Application for Writ of Habeas Corpus. Lowrey alleged the petition was frivolous because Burns knew that the court where he filed the application for Habeas relief "lacked venue-jurisdiction over the subject [] matter."

The magistrate judge recommended that Lowrey's complaint be "dismissed without prejudice for the purposes of proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(d)." The magistrate

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[1]When a parolee or other released prisoner violates the law or a condition of his parole or release or "when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration," he may be arrested and held in custody until parole officials determine whether to return him to the institution from which he was released. TEX. CODE CRIM. PROC. ANN. art. 42.18 § 13(a) (West Supp. 1993). A hearing shall be held within 70 days of arrest or later if required by due process. TEX. CODE CRIM. PROC. ANN. art. 42.18 § 14(a) (West Supp. 1993). Such a parole violation warrant is known as a "blue warrant."

judge also recommended that Lowrey's motion to proceed IFP be denied. The magistrate judge determined that the "Sheriff's Department is not a `person' for the purposes of civil rights litigation," that Robert Burns is a private person who did not act under the color of state law, and that the Board of Pardons and Paroles was immune from suit.

Lowrey objected to the magistrate judge's report, arguing that the Sheriff's Department "should not enjoy a cloak of immunity" and that the Sheriff of Collin County is the proper object of a civil rights suit. The district court found that Lowrey's objection to the report lacked merit, adopted the findings of the magistrate judge, and ordered that Lowrey's suit be dismissed "without prejudice for the purposes of proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(d)," thereby denying Lowrey's motion to proceed IFP.

OPINION

The district court's denial of IFP was procedurally incorrect. See Mitchell v. Sheriff Dept., Lubbock County, 995 F.2d 60, 62 n.1 (5th Cir. 1993). The determination whether to grant IFP is based solely on the plaintiff's economic status. See Cay v. Estelle, 789 F.2d 318, 322 (5th Cir. 1986). If the plaintiff's financial status warrants it, IFP is granted and the case is docketed. See Watson v. Ault, 525 F.2d 886, 891 (5th Cir. 1976). The district court then evaluates the merits of the claim based on the complaint. Cay, 789 F.2d at 323. If the claim is frivolous, it may be

dismissed pursuant to 28 U.S.C. § 1915(d) after filing but before service.

A district court may sua sponte dismiss a pauper's complaint as frivolous only where the complaint lacks an arguable basis in either law or in fact. A reviewing court will disturb such a dismissal only on finding an abuse of discretion. Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992).

Lowrey argues that the district court erred by granting immunity to the Sheriff's Department. He alleges, for the first time on appeal, that the Sheriff's Department has a "policy of permitting untrained agents/employees to violate clearly[-]established law" by arresting individuals without probable cause.

Lowrey's argument that the Sheriff's Department has a policy of unlawfully arresting individuals is raised for the first time on appeal. "[I]ssues raised for the first time on appeal `are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990). Lowrey's argument is nothing more than a new allegation; it should not be addressed on appeal.

Nevertheless, the district court should have allowed Lowrey an opportunity to "flesh out" his allegations against the Sheriff. In screening pro se actions, "`it is incumbent upon the court to develop the case and to sift the claims and known facts thoroughly until completely satisfied either of its merit or lack of same.'"

Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986) (quoting Jones v. Bales, 58 F.R.D. 453, 464 (N.D. Ga. 1972), aff'd by adopting the district court's reasoning, 480 F.2d 805 (5th Cir. 1973)). A district court may hold a hearing or use a questionnaire to "bring into focus the factual and legal bases of prisoners' claims." Spears v. McCotter, 766 F.2d 179, 181-82 (5th Cir. 1985). The district court neither held a hearing nor sent a questionnaire to Lowrey and did not otherwise give him an opportunity to amend his complaint. The district court's dismissal was based solely on facts alleged in Lowrey's pro se complaint. Because Lowrey's claims of unlawful arrest and false imprisonment, liberally construed (see Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)), could raise non-frivolous legal issues, we vacate the district court's dismissal of Lowrey's complaint and remand Lowrey's case for further proceedings. "[A] pro se plaintiff . . . should be permitted to amend his pleadings when it is clear from his complaint that there is a potential ground for relief." Gallegos v. La. Code of Criminal Procedure art. 658, 858 F.2d 1091, 1092 (5th Cir. 1988). The district court improperly dismissed Lowrey's suit because he named the Sheriff's Department as a defendant. A pro se plaintiff should be allowed to amend pleadings to name the proper party when his complaint makes it clear that he states colorable grounds for relief.

The district court also noted that Lowrey is still in custody "apparently on other charges." If Lowrey's instant claims relate to his current incarceration, this raises the issue of whether

Lowrey's instant claims should have been raised initially in a habeas corpus proceeding. See Serio v. Members of Louisiana State Board of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). This matter should be further developed by the district court on remand.

VACATED and REMANDED.