

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5295

Summary Calendar

RANDY L. DANIELS,

Plaintiff-Appellant,

versus

JOHN R. HARRISON, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-592)

(December 20, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Plaintiff, Randy L. Daniels, appeals from a district court order adopting a magistrate judge's recommendation that Daniels' complaint pursuant to 42 U.S.C. § 1983 be dismissed with prejudice. Finding no error, we AFFIRM.

I

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

This case arrives in this court after extensive proceedings. The plaintiff, Randy Daniels, filed a complaint pursuant to 42 U.S.C. § 1983 against his trial counsel and the judge who presided over a state criminal proceeding against him. He also sought release from prison. The magistrate judge who first considered Daniels' complaint concluded that Daniels had no claim under § 1983 against his lawyer or the judge. The lawyer had not acted under color of state law and the judge was entitled to absolute immunity. The magistrate judge further concluded that Daniels should have pursued his request to be released in a habeas corpus proceeding. The magistrate judge recommended dismissing Daniels' complaint as frivolous under 28 U.S.C. § 1915(d).

Initially, after undertaking an independent review of the record, the district court adopted the magistrate judge's recommendation. Subsequently, however, on May 26, 1992, the district court recalled the order and allowed Daniels to raise written objections by June 30, 1992. Daniels filed a motion for appointment of counsel, which the district court denied. Daniels then appealed the district court's refusal to appoint counsel and the district court's adoption of the magistrate's recommendation.

As Daniels appeared not to have appealed in a timely manner, we remanded to the district court to make a determination on the matter. The district court found that Daniels' appeal was not timely. We therefore affirmed dismissal of his appeal of the motion denying appointment of counsel. We noted, however, that the district court recalled its order dismissing Daniels' § 1983 suit

as frivolous and that the court had yet to enter final judgment on the claim. We therefore dismissed Daniels' appeal of the district court's dismissal of Daniels' claim.

On remand, the district court again afforded Daniels an opportunity to raise written objections to the magistrate judge's recommendation. The district court then adopted the magistrate judge's recommendation, dismissing Daniels' complaint with prejudice. From this judgment, Daniels filed a timely notice of appeal.

II

Daniels argues that the district court erred in dismissing his § 1983 claims and he expresses for the first time on appeal his wish to amend his complaint.

Daniels acknowledges that the judge who presided over his case is entitled to absolute immunity. He also does not contest the district court's finding that, before filing this suit, he failed to exhaust his habeas remedies as to his claim to be released. Daniels contends, however, that he should be permitted to amend his complaint to allege that his lawyer is liable under § 1983 for conspiring with a person who acted under color of state law to deprive Daniels of his rights. Daniels offers no argument and makes no factual claim, however, to indicate that his lawyer so conspired.

This is not a case in which the formalities of the legal system prove an impediment to reaching the otherwise meritorious claims of a pro se litigant. Cf. Gallegos v. Louisiana Code of

Criminal Procedures Art. 658 Paragraph A & C(4), 858 F.2d 1091, 1092 (5th Cir. 1988) (holding that a pro se litigant should be permitted to amend his pleadings to reach the merits of his claim when there is a potential ground for relief). Rather Daniels seeks to extend litigation in this case by raising an issue on appeal that he did not raise below and that bears no relevance to his situation. Justice does not require that we afford him that opportunity.

Daniels also claims that the district court erred by denying his motion for appointment of counsel. In an earlier proceeding, we concluded that Daniels' appeal on this matter was not timely. We will not revisit the issue.