

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5386
(Summary Calendar)

RICHARD T. REYNOLDS,

Plaintiff-Appellant,

versus

CLERK OF COURT 9TH JDC,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-cv-1574)

(April 20, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Proceeding pro se, Plaintiff-Appellant Richard T. Reynolds filed a civil rights complaint under 42 U.S.C. § 1983 against the Clerk of Court, 9th Judicial District Court (the "Clerk"), and the Custodian of Records, Police Department of [the City of] Alexandria

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(Louisiana) (the "Custodian"), Defendants-Appellees herein, for alleged constitutional violations in connection with Reynolds' arrest and conviction in state court for crimes of violence including one involving sexual assault. Reynolds appealed the district court's dismissal in part and stay in part of his claim against the Clerk, and dismissal without prejudice of his claim against the Custodian by granting the Custodian's motion for judgment on the pleadings. For the reasons set forth below, we affirm in part and vacate in part to permit Reynolds to exhaust his state and federal habeas remedies; and we order interruption of prescription (tolling of the statute of limitations) on the claims underlying his § 1983 action while he pursues his habeas remedies.

I

FACTS AND PROCEEDINGS

Reynolds, a Louisiana state prisoner convicted of aggravated rape and burglary, sued the Clerk and the Custodian for failure to produce the police report and investigation report associated with his arrest and subsequent conviction. Both defendants moved to dismiss pursuant to Fed. R. Civ. P. 12(b).

The district court denied the Custodian's motion to dismiss, noting that Reynolds had stated sufficient facts "to state a claim for damages resulting from an `official policy.'" Id. at 84-86 (citing Monell v. Department of Social Services of City of New York, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). The district court then construed Reynolds' complaint to contain two claims: 1) that if the police and investigation reports did not

exist, there was insufficient evidence for a grand jury to return an indictment; and 2) that without access to copies of the reports Reynolds was unable to pursue a meaningful appeal.

The district court found the first claim to be a challenge to Reynolds' confinement so that it sounded more properly in habeas. The district court therefore stayed the claim pending the exhaustion of habeas relief. The district court found that Reynolds' second claim was unavailing as, pursuant to Louisiana state law specifically La. Rev. Stat. Ann. § 44:3(A)(4) (West 1992) Reynolds was not entitled to obtain copies of the reports. On the basis of those findings, the district court granted the Clerk's motion to dismiss, stayed Reynolds' § 1983 complaint as to the first claim, and dismissed the second claim. The Custodian then filed an unopposed motion for judgment on the pleadings, which the district court granted, dismissing the first claim as to the Custodian, without prejudice. Reynolds timely appealed both rulings.

II

ANALYSIS

A. First Claim

Reynolds' first claim that without the reports he could not have been convicted indirectly challenges the legality of his confinement. Therefore, Reynolds must pursue state and federal habeas remedies before asserting claims under § 1983. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987). As a general rule, prisoners who challenge the

constitutionality of their convictions or sentences must first exhaust their state and federal habeas remedies as a prerequisite to seeking § 1983 relief. Id. at 1117. Accordingly, in most instances federal courts must decline to address the merits of a potential § 1983 claim until state and federal habeas processes have been exhausted. See id.; William v. Dallas County Comm'rs, 689 F.2d 1212, 1214-15 (5th Cir. 1982), cert. denied, 461 U.S. 935 (1983).

Reynolds admits that he has not pursued habeas remedies. We therefore affirm the district court's dismissal, without prejudice, of Reynolds' first claim, and hold that the applicable prescriptive period shall be interrupted (tolled) while Reynolds pursues habeas relief. Burge v. Parish of St. Tammany, 996 F.2d 786, 788-89 (5th Cir. 1993) (citing Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992)).

B. Second Claim

Reynolds' second claim is that the defendants' failure to furnish copies of the requested reports to him violates his constitutional rights by denying him an opportunity to pursue a meaningful appeal. The district court held that under La. Rev. Stat. Ann. § 44:3(A)(4) (West 1992) Reynolds was not entitled to copies of the reports. We disagree.

Section 44:3(A)(4)(a) mandates that the reports are a matter of public record, and that Reynolds is entitled to them; however, the district court relied on the exception to that rule embodied in § 44:3(A)(4)(d). That exception prohibits "the disclosure of

information which would reveal the identity of the victim of a sexual offense." The district court found that this exception precludes any disclosure of either report.

Reynolds cites no cases, either state or federal, interpreting § 44:3(A)(4)(d). There is Louisiana case law, however, interpreting the parallel exception, embodied in § 44:3(A)(4)(c), prohibiting the disclosure of information which would reveal undercover or intelligence operations. At least one state court of appeal has indicated that the exception does not bar disclosure of the reports in their entirety, and that a criminal defendant is entitled to information otherwise excludable if he already has knowledge of such information. State v. Campbell, 566 So.2d 1038, 1043 (La. Ct. App. 1990). We are therefore constrained to conclude that the district court erred in dismissing Reynolds' second claim based on the proposition that the exception to § 44:3(A)(4) applied to prevent disclosure of the subject reports in their entirety.

As Reynolds may be entitled to the information sought, and as he asserts that he requested that information for the purpose of pursuing a meaningful appeal, he is again indirectly challenging his conviction so that his claim sounds more properly in habeas. And again, he must exhaust state and federal habeas remedies before seeking § 1983 relief. See Serio, 821 F.2d at 117; see also discussion in Section II.A. supra.

For the foregoing reasons we affirm the district court's stay of Reynolds' § 1983 complaint regarding the first claim, but we vacate the district court's dismissal of the second claim.

Reynolds' complaint is thus stayed in its entirety and prescription interrupted (the statute of limitation tolled) pending his exhaustion of his state and federal habeas relief. See Burge, 996 F.2d at 788-89. As Reynolds is proceeding pro se, we take the additional pains to point out that he must raise in his habeas proceedings the issue of entitlement to copies of the reports as urged in his so-called second claim if he intends to pursue it.

AFFIRMED in part and VACATED in part.