UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7632
Summary Calendar

SABRINA T. BUTLER,

Plaintiff-Appellant,

VERSUS

THOMAS G. WALLACE, Etc., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(1:91CV121-D-O)

(December 7, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Sabrina Butler, *pro se*, appeals from the denial of her Fed. R. Civ. P. 60(b) motion. We **AFFIRM**.

I.

Butler, *pro se*, filed a civil action for injunctive relief and damages for alleged violations of her constitutional rights in connection with her conviction for murder. Although Butler voluntarily dismissed her complaint, she was later allowed to reinstate the action. Following a hearing to clarify Butler's

---

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 Pursuant to that rule, the court has determined that this opinion should not be published.

complaint, the magistrate judge recommended that it be dismissed for failure to exhaust state habeas remedies, noting that Butler's direct appeal of her murder conviction was pending before the Mississippi Supreme Court. The district court adopted the magistrate judge's findings, and dismissed Butler's complaint without prejudice.

After the time for taking an appeal had expired, Butler filed a motion, which the district court construed as a Rule 60(b) motion for relief from the judgment. Butler's motion contended, among other things, that she was not required to exhaust state remedies prior to bringing a ***Bivens*** claim. Considering the judgment correct, the district court denied Butler's motion.

II.

Because Butler's appeal, and our review, is limited to the denial of the Rule 60(b) motion, our review is necessarily narrower in scope than that of the underlying dismissal. ***Aucoin v. K-Mart Apparel Fashion Corp.***, 943 F.2d 6, 8 (5th Cir. 1991).[2] Our review is only for abuse of discretion: "[i]t is not enough that the granting of relief might have been permissible, or even warranted -- denial must have been so *unwarranted* as to constitute an abuse of discretion." ***Cooper v. Noble***, 33 F.3d 540, 544 (5th Cir. 1994) (quoting ***Seven Elves, Inc. v. Eskenazi***, 635 F.2d 396, 402 (5th Cir. 1981)).

---

[2] On appeal, Butler also makes various claims and assertions unrelated to the propriety of the denial of her Rule 60(b) motion. We need not consider them.

Butler offers only one basis for relief, contending that she need not exhaust state remedies prior to bringing a claim under ***Bivens v. Six Unknown Named Agents***, 403 U.S. 388, 91 S.Ct. 1999 (1971). But, a ***Bivens*** claim is proper only against federal, not state agents.

We note, however, that under ***Heck v. Humphrey***, 114 S. Ct. 2364, 2372 (1994), Butler is not required to exhaust state remedies, provided her conviction has been "called into question" by a state or federal tribunal. Prior to the disposition of her Rule 60(b) motion, Butler's conviction was reversed. ***Butler v. State***, 608 So. 2d 314 (Miss. 1992). Butler did not inform the district court that her conviction had been reversed; and ***Heck*** was not decided until after the district court denied Butler's motion. Furthermore, because the applicable statute of limitations has not run, Butler is not foreclosed from refiling her claim.[3] Therefore, we conclude that the denial of the Rule 60(b) motion was not "so unwarranted as to constitute an abuse of discretion". *See* ***Bailey v. Ryan Stevedoring Co., Inc.***, 894 F.2d 157, 160 (5th Cir.), *cert. denied*, 498 U.S. 829 (1990).

III.

For the foregoing reasons, the denial of the Rule 60 motion is **AFFIRMED**.

---

[3] Butler's cause of action arose in August of 1992, when the Mississippi Supreme Court reversed her conviction. ***Heck***, 114 S. Ct. 2373. The applicable statute of limitations is three years. *See* ***James By James v. Sadler***, 909 F.2d 834, 836 (5th Cir. 1990).