

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8399
Conference Calendar

JULIAN SCOTT ESPARZA,

Plaintiff-Appellant,

versus

ROGELIO F. MUNOZ,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-93-CV-14
- - - - -

August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Julian Scott Esparza filed a civil rights action against Rogelio F. Munoz, the District Attorney of Uvalde County, Texas. He alleged that Munoz prosecuted him for attempted murder "without sufficient evidence to support the verdict."

Esparza contends that the district court erred in dismissing his civil rights action as frivolous based on the prosecutor's absolute immunity. He argues that Munoz is not immune and "is subject in his person to the consequences of his individual conduct. . . ."

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 Court recognizes a cause of action under § 1983 for malicious prosecution. Sanders v. English, 950 F.2d 1152, 1159 (5th Cir. 1992). The cause of action implicates "the fourth and fourteenth amendments when the individual complains of an arrest, detention, and prosecution without probable cause." Id. (internal quotations and citation omitted). "Whether an official is entitled to absolute or qualified immunity depends on the nature of the official's function at issue." Enlow v. Tishomingo County, Miss., 962 F.2d 501, 510 (5th Cir. 1992). Prosecuting attorneys enjoy absolute immunity in § 1983 actions "for their conduct in initiating a prosecution and in presenting the State's case. . . ." Id. (quoting Imbler v. Pachtman, 424 U.S. 409, 427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)).

Esparza's claim against Munoz concerns conduct in prosecuting him for murder; therefore, it has no arguable basis in law and fact. The district court did not abuse its discretion in dismissing the claims as frivolous. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

To the extent that Esparza challenges the sufficiency of the evidence to support his conviction, his remedy is in habeas corpus. See Sheppard v. State of La. Bd. of Parole, 873 F.2d 761, 762 (5th Cir. 1989) (citing Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117-19 (5th Cir. 1987)) ("[W]here a prisoner's civil rights allegations impinge in part on the validity of his current confinement, he must initially seek relief through habeas corpus proceedings."). "[T]he requirement of exhaustion cannot be evaded by casting the complaint in civil

rights form." Hernandez v. Spencer, 780 F.2d 504, 505 (5th Cir. 1986).

AFFIRMED.