

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8446
Conference Calendar

BERNARD KIRK BARNES
a/k/a Abdullah Fallahda Musiwire,

Plaintiff-Appellant,

versus

JACK KYLE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-92-CV-16
- - - - -
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Bernard Kirk Barnes, a/k/a Abdullah Fallahda Musiwire, filed a civil rights complaint alleging that Jack Kyle, the Chairman of the Texas Board of Pardons & Paroles, denied him parole in violation of the Equal Protection clause. The district court granted Kyle's motion to dismiss and dismissed the complaint without prejudice to Barnes exhausting his state and federal habeas remedies.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is appropriate when, accepting all well-pleaded facts as true and viewing them in the light most favorable to the plaintiff, the plaintiff can prove no set of facts that would entitle him to relief. Walter v. Torres, 917 F.2d 1379, 1380, 1383 (5th Cir. 1990). In his complaint Barnes did not specify whether he is suing Kyle in his individual or official capacities. To the extent that he is suing Kyle in his official capacity, the lawsuit is actually a lawsuit against the State of Texas, Will v. Michigan Dep't of State Police, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989), and claims of damages against a state are barred by the Eleventh Amendment. McCord v. Maggio, 927 F.2d 844, 847 (5th Cir. 1991). To the extent that Barnes is suing Kyle in his individual capacity, members of the parole board are absolutely immune from monetary damages under § 1983 for their conduct in individual parole decisions when exercising their decision-making powers. Walter, 917 F.2d at 1384.

To the extent that Barnes is challenging the duration of his confinement, the writ of habeas corpus is the appropriate federal remedy. Preiser v. Rodriguez, 411 U.S. 475, 490, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). To determine which remedy a prisoner should pursue, the Court looks beyond the relief sought to determine whether the claim, if proved, would factually undermine or conflict with the validity of the fact or length of confinement. Richardson v. Rodriguez, 651 F.2d 366, 372 (5th Cir. 1981). To the extent that Barnes is alleging that because

he is a black male, he is required to serve more time before being paroled, his claim affects the validity of the duration of his confinement and he must exhaust his state and federal habeas remedies. See Spina v. Aaron, 821 F.2d 1126, 1128 (5th Cir. 1987); 28 U.S.C. §§ 2254(b), (c). To the extent that his § 1983 civil rights suit seeks injunctive relief based on his equal protection claim, this claim is inextricably intertwined with his habeas claims and must await exhaustion of his state and federal habeas remedies.

AFFIRMED.