

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-8830
Summary Calendar

CLYDE WAYNE STUART,

Plaintiff-Appellant,

VERSUS

THOMAS LOWE, Clerk of Court,
Court of Criminal Appeals,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas

(A-93-CA-434-JN)

(May 3, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

Clyde Wayne Stuart, a TDCJ inmate, filed this 42 U.S.C. § 1983 action alleging that Thomas Lowe, the Clerk of the Court of Criminal Appeals (clerk), refused to present Stuart's petitions for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

habeas corpus relief to the appellate court.

Stuart alleged that he filed a petition for habeas corpus relief with respect to a case originating in Dallas County, Texas, and received a white card from the clerk in February 1993 notifying him that his writ had been denied without a written order and without presentation to the appellate court. Stuart further alleged that he filed a petition for habeas relief in the state trial court in Navarro County, Texas, in March 1993, and received findings and conclusions from that court dismissing his habeas petition for abuse of the writ. Stuart alleged that he filed objections to the Navarro trial court's findings to be presented to the appellate court, and the clerk refused to submit the objections to the court. Stuart alleged that the clerk denied him access to the appellate court and prayed for compensatory and punitive damages.

The magistrate judge ordered Stuart to show cause why his complaint against the clerk should not be dismissed based on absolute immunity. Stuart responded that the record does not reflect that the state appellate court judges reviewed his writ and objections prior to the clerk sending him notice that his writ was denied or that the clerk acted pursuant to a court order. However, Stuart attached to his responsive pleading a letter addressed to him by the clerk, stating that the appellate court had directed the clerk at the time of dismissing Stuart's petition for abuse of the writ in 1976 not to accept any further applications from Stuart unless the petition satisfied certain conditions. The clerk stated

that Stuart's application did not satisfy the requirements of the Court and, therefore, "the Court will take no action on this writ."

The magistrate judge recommended dismissing the complaint pursuant to Fed. R. Civ. P. 12(b)(6), determining that the pleadings filed in the record by the plaintiff established that the defendant was acting in accord with the order of the appellate court. The magistrate recommended that the complaint against the clerk be dismissed on the basis of absolute immunity.

Stuart filed objections to the magistrate judge's recommendation. The district court adopted the magistrate judge's recommendation and dismissed the complaint with prejudice.

OPINION

A question arises whether Stuart's complaint should be construed as a habeas petition. If Stuart's § 1983 complaint could be construed as challenging the validity of his state court conviction, he would be required initially to pursue his habeas remedies prior to obtaining a resolution of his civil rights damage claim. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117 (5th Cir. 1987). However, the fact that the resolution of a § 1983 claim may have some indirect effect on the determination whether Stuart may be released from incarceration does not, alone, determine whether the habeas remedies must be initially pursued. Johnson v. Pfeiffer, 821 F.2d 1120, 1123 (5th Cir. 1987). Stuart's claim that the clerk has denied him access to the appellate court does not challenge the constitutionality of his conviction or sentence. Further, the disposition of Stuart's claim

against the clerk of court will have no bearing on the state or federal courts' determination with respect to the validity of his conviction. Therefore, it is not necessary to defer the disposition of the § 1983 claim pending his exhaustion of all habeas remedies. See Serio, 821 F.2d at 1115; see also Johnson, 821 F.2d at 1123 (petitioner challenging parole board procedures which will not entitle a petitioner to automatic release need not pursue habeas remedies).

Stuart argues that there is no basis in the record for the district court's finding that the clerk acted at the direction of the appellate court judges in refusing to submit his writ and objections to the state appellate court. Stuart argues that he made a showing why his points of error could not have been presented in his earlier petition and, therefore, the clerk should have presented his pleadings to the court. Stuart argues that the clerk denied him access to the courts.

This Court reviews a district court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) de novo. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). The Court must accept the plaintiff's factual allegations as true. Id. "Unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, the complaint should not be dismissed for failure to state a claim." Id. at 284-85 (internal quotation and citation omitted). The district court may not look beyond the pleadings to rule on a motion to dismiss. McCartney v. First City Bank, 970 F.2d 45, 47

(5th Cir. 1992).

Stuart's pro se pleading in response to the magistrate judge's rule to show cause order should have been construed liberally as an amendment to Stuart's complaint. See Rodriguez v. Holmes, 963 F.2d 799, 801 (5th Cir. 1992) (pro se pleadings are entitled to a liberal construction); Sherman v. Hallbauer, 455 F.2d 1236, 1242 (5th Cir. 1972) (opposition memoranda to summary judgment motion raised a new issue and should have been construed as an amendment to the complaint).

A document attached to a complaint is to be treated as part of the complaint for all purposes. See Fed. R. Civ. P. 10(c); Neville v. American Republic Ins. Co., 912 F.2d 813, 814 n.1 (5th Cir. 1990). "Conclusory [sic] allegations and unwarranted deductions of fact [contained in a complaint or petition] are not admitted as true, especially when such conclusions are contradicted by facts disclosed by a document appended to the complaint." Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974) (citations omitted). If the document discloses facts that foreclose recovery as a matter of law, dismissal is appropriate. Id.

The district court properly considered the letter attached to Stuart's amended complaint in determining whether the complaint was subject to a Rule 12(b)(6) dismissal.

Court clerks possess absolute immunity from actions for damages if the clerk is "acting in a nonroutine manner under command of court decrees or under explicit instructions of a judge.

Damages will not be awarded for a clerk's actions of this type even if in bad faith or with malice." Williams v. Wood, 612 F.2d 982, 985 (5th Cir. 1980) (citations omitted).

The letter attached to Stuart's pleading reflects that the Clerk was acting pursuant to the appellate court's order of July 14, 1976, directing the Clerk not to accept any further applications for writ of habeas corpus from Stuart unless it is first shown that the contentions could not have been presented in an earlier appeal or application for writ of habeas corpus. Although Stuart alleges that the clerk was not acting at the direction of the judges, he acknowledges in his pleadings that the appellate court did issue an order in 1976 as cited by the Clerk. Stuart's complaint is that the clerk did not act in accord with the court's direction because the clerk failed to submit the writ and objections to the court although Stuart made the requisite showing.

Accepting as true Stuart's allegations that the clerk erroneously or maliciously refused to submit the writ and objections to the appellate court, the clerk remains entitled to absolute immunity from damage liability because the clerk was acting pursuant to a court order. Williams, 612 F.2d at 985. Therefore, the district court did not err in dismissing the claim pursuant to Rule 12(b)(6).

Stuart argues that the district court failed to address his allegation that the Clerk failed to submit another writ which Stuart had filed in a different county to the appellate court. Stuart argues that there is no basis in the record to support the

clerk's failure to submit the writ.

The district court did not address Stuart's allegations with respect to the writ that Stuart filed in Dallas, County, Texas, which was denied without written reasons in February 1993. The district court addressed only the petition that was filed on March 17, 1993.

It is not clear from the record whether the habeas petition filed by Stuart in Dallas County was returned by the clerk pursuant to the 1976 order discussed above. The letter attached to Stuart's complaint specifically refers to the petition filed in Navarro County. Because Stuart's allegations do not establish that the clerk was acting pursuant to a court order in failing to submit this writ to the appellate court, we cannot dismiss this claim on the basis of absolute immunity at this stage of the proceedings.

We AFFIRM the district court's dismissal as to the petition filed in Navarro County; we VACATE the dismissal as to the petition filed in Dallas County and REMAND to the district court for further proceedings consistent herewith.