

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9020
Conference Calendar

WILLIAM STEVE MCGREW,

Plaintiff-Appellant,

versus

SEVEN-ELEVEN STORES,
A SOUTHLAND CORPORATION,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:93-CV-141-K
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). Such a dismissal is reviewed under the abuse-of-discretion standard. Id. at 1734.

In order to prove a claim under § 1983, a plaintiff must show that the defendant deprived him of a right secured by the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Constitution and laws of the United States while acting under color of state law. Manax v. McNamara, 842 F.2d 808, 812 (5th Cir. 1988). An allegation that a private defendant filed a criminal complaint against the plaintiff does not satisfy the "under color of state law" requirement. See Brummet v. Camble, 946 F.2d 1178, 1184 (5th Cir. 1991), cert. denied, 112 S.Ct. 2323 (1992).

McGrew did not allege in his complaint that the defendants acted in concert with state officials to deprive him of his constitutional rights. This Court is not required to address McGrew's argument that the defendants conspired with state actors that is raised for the first time on appeal. See Murray v. Anthony J. Bertucci Const. Co., 958 F.2d 127, 128 (5th Cir.), cert. denied, 113 S.Ct. 190 (1992).

Because there is no arguable legal or factual basis for asserting a claim against the private defendants under § 1983, the district court did not abuse its discretion in dismissing the complaint pursuant to § 1915(d).

McGrew's motion to supplement the appellate record is DENIED. This Court will not consider factual evidence that has not been presented in the district court. United States v. Flores, 887 F.2d 543, 546 (5th Cir. 1989)

McGrew's motion for appointment of counsel is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

AFFIRMED.