

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10006
Conference Calendar

CLYDE DAVID SURRELL,

Plaintiff-Appellant,

versus

TWO UNKNOWN DALLAS POLICE
OFFICERS, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-2232-R
- - - - -
(July 19, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Clyde David Surrell argues that arresting officers somehow violated his constitutional rights by inquiring about his criminal history and later reporting his criminal history to a magistrate judge. He states that his criminal arrest records "were totally unavailable" to the officers who arrested him because he "was currently on probation for those offenses. Therefore, they were not final convictions." Surrell's argument is patently meritless. No constitutional questions are raised by

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the allegation that the officers transporting Surrell to the detention center tried to determine by questioning and later determined by checking records that Surrell could be charged with an enhancement provision.

A district court may sua sponte dismiss a pauper's complaint as frivolous when the complaint lacks an arguable basis in either law or in fact. A reviewing court will disturb such a dismissal only on finding an abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992).

Surrell did not allege that the officers intentionally provided the magistrate with information that they knew to be false. Cf. Hand v. Gary, 838 F.2d 1420, 1427 (5th Cir. 1988) (malicious prosecution). Surrell's pleadings and answers to the magistrate's questionnaire allege only that the officers delivered accurate information regarding Surrell's criminal history to the magistrate. At best, Surrell's claims suggest negligence on the part of the officers, and these claims do not rise to the level of a constitutional violation. See Herrera v. Millsap, 862 F.2d 1157, 1160 (5th Cir. 1989).

Surrell relied upon the theory of respondeat superior in his claims against the City of Dallas. A defendant cannot be held liable under 42 U.S.C. § 1983 on a theory of vicarious liability, including respondeat superior. Baskin v. Parker, 602 F.2d 1205, 1207-08 (5th Cir. 1979).

Because Surrell's allegations do not raise a constitutional issue, neither § 1983 nor habeas can give him relief. Because

Surrell's claims lack an arguable basis in law, the district court's dismissal of Surrell's claims was not an abuse of discretion. The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.

Surrell is cautioned against filing frivolous matters in this Court or a court under the jurisdiction of this Court. Further frivolous filings will result in sanctions.