

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10671
Conference Calendar

SAMUEL DEWAYNE SNOWDEN,

Plaintiff-Appellant,

versus

STATE OF TEXAS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-1071-R

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Samuel Wayne Snowden argues that the district court erred in dismissing his complaint as frivolous prior to permitting Snowden to present evidence in support of his claim. A district court may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis in law or in fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). The dismissal is reviewed for an abuse of discretion. Id., 112 S. Ct. at 1734.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 district court dismissed the complaint, having determined that Snowden's general allegations were insufficient to state a claim under § 1983 because they do not state specific facts concerning the alleged misconduct of counsel. The district court also determined that Snowden was attacking his conviction and that Snowden was required to seek habeas corpus relief. This Court may affirm the dismissal of Snowden's complaint as frivolous on grounds other than those relied upon by the district court. See Bickford v. Int'l Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981).

If the district court's dismissal of Snowden's complaint is viewed as a dismissal for failure to exhaust his state remedies, it was incorrect in light of Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994), which was announced after the district court's order was entered. Heck held that if a claim arising under 42 U.S.C. § 1983 implicates the validity of a state conviction, exhaustion of state remedies is not required. Id., 114 S. Ct. at 2369-70. However, in order to recover damages under 42 U.S.C. § 1983 for such a claim, the plaintiff must prove that his conviction or sentence had been reversed on direct appeal or otherwise "called into question" by a state or federal tribunal. Id. at 2372. Heck further held that such a § 1983 claim "does not accrue until the conviction or sentence has been invalidated." Id. at 2373.

Snowden's complaint alleged that his conviction was invalidly obtained as a result of his counsel's ineffectiveness

and a defective indictment. Snowden has not alleged that his conviction has been reversed, expunged, or otherwise invalidated by a state or federal tribunal. Snowden's § 1983 complaint was properly dismissed as frivolous in light of Heck.

AFFIRMED.