

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10694  
Conference Calendar

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WAYNE MORRIS REEVES, JR.,

Plaintiff-Appellant,

versus

JOHN VANCE ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-2444-T

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(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

Wayne Morris Reeves, Jr., a Texas state prisoner, filed a civil rights complaint under 42 U.S.C. § 1983. The district court dismissed the suit as frivolous pursuant to 28 U.S.C. § 1915(d). A district court may dismiss an IFP complaint as frivolous if it lacks an arguable basis either in law or in fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992). A § 1915(d) dismissal is reviewed for abuse of discretion. Id. at 1734.

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 substance of Reeves's complaint is that he was wrongly convicted of a violation of the Dallas Health and Safety Code by the improper action of District Attorney John Vance and Assistant District Attorney Tom D'Amore acting in concert with his defense counsel, John Stauffer. The allegations against Vance and D'Amore have no basis in law because prosecutors have absolute immunity from § 1983 damage claims arising out of their actions in prosecuting a criminal case. Graves v. Hampton, 1 F.3d 315, 317-18 (5th Cir. 1993), abrogated on other grounds, Arvie v. Broussard, \_\_\_ F.3d \_\_\_, No. 93-4189, 1994 WL 714264 (5th Cir. Dec 23, 1994).

With respect to the claims against Stauffer, he could be liable under § 1983 if he and the prosecutors conspired to act under color of state law to deprive Reeves of a constitutional right even though Stauffer is not a state actor. See Daniel v. Ferguson, 839 F.2d 1124, 1131 (5th Cir. 1988). The claim, however, is not ripe because a claim challenging the validity of a conviction cannot be brought under § 1983 unless that "conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, \_\_\_ U.S. \_\_\_, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994). Reeves has not shown that his conviction has been so invalidated. See Stephenson v. Reno, 28 F.3d 26, 27-28 (5th Cir. 1994).

AFFIRMED.