

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 94-10792
Summary Calendar

EDWARD JAMES BREWER, Plaintiff-Appellant,
versus
CATHYE RAY, ET AL., Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(3:93-CV-332-X)

January 30, 1995

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM*:

Edward James Brewer ("Brewer") appeals the dismissal of his section 1983 case as frivolous under 28 U.S.C. § 1915(d). We dismiss the appeal as frivolous.

I.

Brewer, currently incarcerated by the Texas Department of Criminal Justice on a conviction for aggravated robbery¹, filed

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ Brewer's prosecution and conviction in the justice of the peace court for issuing bad checks carried a maximum penalty of a \$200 fine. See TEX. CODE CRIM. PROC. ANN. art. 4.11 (West 1977);

this civil rights action against Cathye Ray, Mayor of Mesquite, Texas; James A. Pruget, Jr., City Manager of Mesquite; John Vance, District Attorney; Jim Bowles, Sheriff; Nancy Judy, Commissioner; John Wiley Price, Commissioner; Ken Blackington, Justice of the Peace; the unnamed district attorney who prosecuted him; Lee Jackson, county judge; Woolworth management and Honey-Baked management, charging parties in his prosecution for issuing bad checks; and the municipality of Mesquite, Texas. He claimed defendants conspired to deprive him of his constitutional rights in his prosecution and conviction on two false charges of issuing bad checks on August 28, 1991 by denying him counsel and a jury trial and by not providing him the opportunity to present a defense. Specifically, Brewer asserted that Justice of the Peace Ken Blackington allowed the district attorney to prosecute him without probable cause; that the management of the Woolworth and Honey-Baked stores, who testified at his trial, slandered him; and that the other Mesquite officials named as defendants, although not personally involved, violated his constitutional rights because they supported his prosecution by virtue of their official positions.

The district court found Judge Blackington had absolute judicial immunity from suit under § 1983, that District Attorney John Vance and the unnamed district attorney had absolute prosecutorial immunity, that the employees of the Woolworth and

TEX. PENAL CODE ANN. §§ 12.23 and 32.41 (West 1994). Therefore, Brewer is not in custody for the offenses challenged in this civil rights action.

Honey-Baked stores who testified at his trial had absolute immunity as witnesses, and that none of the other Mesquite officials were responsible for any violation of his civil rights because Brewer had not alleged any personal involvement. The court dismissed the action as frivolous pursuant to 28 U.S.C. § 1915(d), and denied Brewer's motion for reconsideration.

II.

Brewer argues on appeal that he was denied his right to proper redress of grievances under the First Amendment because he was never allowed proper access to information in the district attorney's possession that would aid him in preparing for his defense; the judge and district attorney tried and convicted him without due process of law; the judge and district attorney conspired to convict him without an attorney; and he was denied a jury trial.

Brewer does not make any allegations or arguments about any of the other defendants, nor does he address the merits of the district court's judgment dismissing the other defendants. We will not raise and discuss legal issues that the appellant has failed to assert. Therefore, Brewer's claims against these defendants are not pressed on appeal are considered abandoned. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Brewer's suit is in essence an attack on the legality of his conviction. The United States Supreme Court directed in *Heck v. Humphrey* that:

to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by

actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the 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 a writ of habeas corpus.

___ U.S. ___, 114 S.Ct. 2364, 2372, 129 L.Ed.2d 383 (1994) (footnote omitted). The Court reasoned that § 1983 claims arising out of an alleged unlawful conviction or sentence are analogous to the common law tort of malicious prosecution, requiring an allegation and proof of the termination of the prior criminal proceeding in favor of the accused. *Id.* at 2371-72. However, this Court has held that "it remains appropriate for district courts to consider the possible applicability of the doctrine of absolute immunity . . . as a threshold matter in making a § 1915(d) determination," prior to reaching the *Heck* analysis. *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994). Thus, we are foreclosed from addressing the merits of Brewer's appeal because we find the defendants are protected by the doctrine of absolute immunity.

The appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.