

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10928
Conference Calendar

ROY EARL MOSLEY,

Plaintiff-Appellant,

versus

JOHN VANCE, District Attorney,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-1743-P
- - - - -

(January 26, 1995)

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

PER CURIAM:*

Roy Earl Mosley, a Texas prisoner, proceeding pro se and in forma pauperis, filed this § 1983 action against John C. Vance, District Attorney of Dallas County, Texas, alleging that Vance manufactured the indictment against him without the authority of the grand jury and contrary to the laws of the state of Texas and the Constitution of the United States. The district court dismissed his complaint as frivolous under § 1915(d), holding

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that he had failed to state a claim according to Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

A district court may dismiss an in forma pauperis complaint if it is frivolous, that is, 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 criminal prosecutor such as District Attorney Vance has absolute immunity from § 1983 damage claims arising out of his actions in prosecuting a criminal action. Graves v. Hampton, 1 F.3d 315, 318 (5th Cir. 1993). Mosley's claim falls within the scope of this immunity.

Mosley contends that Vance's actions were outside the scope of his jurisdiction and authority because he altered the indictments and introduced manufactured evidence, resulting in a deprivation of due process and malicious prosecution. Allegations that the prosecutor has acted maliciously or in bad faith do not destroy the prosecutor's immunity. See Brummett v. Camble, 946 F.2d 1178, 1181-82 (5th Cir. 1991), cert. denied, 112 S. Ct. 2323 (1992). The district court did not abuse its discretion in dismissing Mosley's claim as frivolous.

The district court correctly held that Mosley had failed to state a claim under Heck. However, this Court has decided 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).

APPEAL DISMISSED AS FRIVOLOUS. See 5th Cir. R. 42.2.