

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

S)))))))))Q

No. 94-10942
Summary Calendar
S)))))))))Q

DAVID E. LEWIS,

Plaintiff-Appellant,

versus

B.E. LADD, I.D. 2508 and
R.D. ABBOTT, I.D. 1995,

Defendants-Appellees.

S)))))))))Q

Appeal from the United States District Court for the
Northern District of Texas
(4:94-CV-655-A)
S)))))))))Q
(April 4, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant David Earl Lewis (Lewis), proceeding *pro se* and *in forma pauperis* (IFP), filed this suit on September 29, 1994, pursuant to 42 U.S.C. § 1983 against Fort Worth Police Officers B.E. Ladd and R.D. Abbott. Lewis alleged that on February 3, 1993, while he was at a friend's house, Officers Ladd and Abbott

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dropped something near Lewis, retrieved it, then placed Lewis under arrest for possession of a controlled substance. Lewis asserted that a jury found him not guilty of this charge. Lewis alleged that he was falsely accused and confined on a drug charge. He sought compensation for his "physical and mental strain and lost [sic] of wages." He also sought compensation for his property that was seized during the arrest and subsequently sold. Lewis requested that Ladd and Abbott be investigated for possible perjury. No filing was made by any defendant. On October 3, 1994, the district court, without prior notice, without any *Spears* hearing or similar effort to probe Lewis' complaint, and without affording an opportunity to amend, *sua sponte* dismissed the suit pursuant to 28 U.S.C. § 1915(d).

Lewis' argument on appeal, liberally construed, is that the district court abused its discretion by dismissing his section 1983 claims as frivolous without being "given a reasonable and full opportunity to present evidence in some acceptable form."

Under section 1915(d), federal courts may dismiss claims filed IFP "if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d). "A claim is frivolous under § 1915(d) only if it lacks an arguable basis either in law or in fact." *Parker v. Fort Worth Police Dep't*, 980 F.2d 1023, 1024 (5th Cir. 1993) (internal quotation and citation omitted). A complaint is factually frivolous if "the facts alleged rise to the level of the irrational or the wholly incredible." *Denton v. Hernandez*, 112 S.Ct. 1728, 1733 (1992). A complaint lacks an arguable basis in law if it is "based on an indisputable meritless legal theory," such as if the

defendants are clearly immune from suit or if the complaint alleges the violation of a legal interest which clearly does not exist. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). If a complaint raises an arguable question of law which the district court ultimately finds should be resolved against the plaintiff, "dismissal under the section 1915(d) frivolousness standard" is not appropriate. *Moore v. Mabus*, 976 F.2d 268, 269 (5th Cir. 1992).

This Court reviews section 1915(d) dismissal for abuse of discretion. *Denton*, 112 S.Ct. at 1734.

Lewis brought suit as a *pro se*, IFP litigant, whose allegations described Fourth and Fourteenth Amendment violations for false arrest, false imprisonment, and deprivation of property. This Circuit recognizes causes of action under section 1983 for false arrest and false imprisonment. *Sanders v. English*, 950 F.2d 1152, 1159 (5th Cir. 1992). The district court's section 1915(d) dismissal was inappropriate because Lewis' allegations did not rise to the level of the "fanciful, fantastic, and delusional"; nor did the case present circumstances under which a determination of legal frivolousness could be made. See *Denton*, 112 S.Ct. at 1733.

The district court invoked the *Younger v. Harris* abstention doctrine as the basis for determining that it lacked jurisdiction in this case. Under this doctrine, federal courts abstain from intervening in pending state court prosecutions. *Younger v. Harris*, 401 U.S. 37, 45 (1971). Lewis alleged that he had been tried and acquitted on the controlled substance charge. Because there are no pending state court proceedings, *Younger v. Harris* is inapplicable. The district court erred as a matter of law in

dismissing Lewis' suit on this basis.

The judgment of dismissal is VACATED and the cause is REMANDED for further proceedings not inconsistent herewith.

VACATED and REMANDED