IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11017
Conference Calendar

ROLAND MORIN BERGARA,

Plaintiff-Appellant,

versus

JIM PETE HALE,

Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:94-CV-250

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(January 26, 1995)

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

PER CURIAM:[*]

"Section 1983 affords redress against a person who under color of state law deprives another person of any federal constitutional or statutory right." San Jacinto Sav. & Loan v. Kacal, 928 F.2d 697, 700 (5th Cir. 1991). An attorney, regardless whether he is retained, court-appointed, or a public defender, does not act under color of state law when he exercises independent professional judgment to counsel a defendant in a criminal proceeding. Polk County v. Dodson, 454 U.S. 312, 324-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

25, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981); United States ex rel. Simmons v. Zibilich, 542 F.2d 259, 261 (5th Cir. 1976). Bergara's allegations that his court-appointed attorney represented him ineffectively do not support a suit under § 1983. See Polk County, 454 U.S. at 324-25. Further, it does not appear that additional factual development would allow Bergara's claim to "pass § 1915(d) muster." See Eason v. Thaler, 14 F.3d 8, 9-10 (5th Cir. 1994). Thus, the district court did not abuse its discretion by dismissing Bergara's complaint as frivolous pursuant to § 1915(d).

The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

DISMISSED.