

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40896

Summary Calendar

DAVID M. NICHOLS,

Plaintiff-Appellant,

v.

WAYNE MCKELVIN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(93-CV-1107)

(April 12, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

David M. Nichols, a Texas state prisoner, appeals the district court's grant of summary judgment in favor of the defendants in his 42 U.S.C. § 1983 action alleging deprivation of various federal constitutional rights flowing from his detention in Louisiana while awaiting extradition to Texas. We affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 16, 1993, the Vinton City Police in Vinton, Louisiana, arrested Nichols on a charge of public intoxication and disorderly conduct.¹ After arresting Nichols, the Vinton police discovered that an outstanding arrest warrant for Nichols had been issued by the state of Texas on the charge of aggravated robbery. On March 18, 1993, Nichols was booked into the Calcasieu Correctional Center, a facility maintained by Sheriff Wayne McElveen.² The same day, Nichols was brought before a state trial judge, the Honorable Arthur J. Planchard, and executed a written waiver of extradition to Texas. Also on March 18, 1993, after obtaining Nichols' signed waiver of extradition, the Calcasieu Parish Sherriff's Office sent a telex to the authorities in Orange, Texas, which stated:

Please be advised, the above subject [Nichols] has signed waiver of extradition this date, on your charges of aggravated robbery-threat/deadly weapon. You have ten (10) days to take custody of said subject. Please advise this office when you will come for him.

Finally, on April 16, 1993-- thirty-one days after his initial arrest by the City of Vinton Police and twenty-nine days after his waiver of extradition and arrival at the Calcasieu Correctional Center-- authorities from Orange County, Texas,

¹ Nichols contends that these charges were subsequently dropped when it was learned that Nichols was wanted in Texas for aggravated robbery. The defendants do not contest this assertion.

² Nichols incorrectly spelled the Sherriff's name in his initial complaint as "McKelvin." The Sherriff's correct name, McElveen, will be used in the opinion.

picked up Nichols and transported him to Texas in order to stand trial for the Texas robbery charge.

On June 30, 1993, Nichols, proceeding pro se and in forma pauperis, instituted suit under 42 U.S.C. § 1983, alleging that Sheriff McElveen and the Calcasieu Parish Sheriff's Department violated his federal constitutional rights by detaining him for more than ten working days, the maximum period of time that he alleges Judge Planchard stated he could be lawfully held in Louisiana. The magistrate judge permitted Nichols to proceed *in forma pauperis*. On June 22, 1993, the magistrate judge ordered Nichols to provide a more definite statement of his cause of action pursuant to Rule 8(a) of the Federal Rules of Civil Procedure. In response to the magistrate judge's order, Nichols filed a statement alleging that Judge Planchard violated his constitutional rights "by not having council [sic] to explain what extradition laws are, and my rights of extradition, and the fact that I did not receive a copy of extradition" Nichols also alleged that four additional law enforcement officers³ had violated his constitutional rights by knowingly detaining him beyond the ten day period which he contended was "the time limit according to law."

On January 10, 1994, Nichols filed a "First Amended Complaint" which reiterated his complaint against Judge

³ Specifically, the four individuals are: "Mr. LaBlanc," whom he characterized as "an officer of a correctional facility"; "Shift Sgt. (Larry)," ; "Shift Supervisor (Coach)"; and "Mr. Teate," and individual to whom Nichols was apparently instructed to write in order to complain about his continued detention.

Planchard, Sherriff McElveen, and the Calcasieu Sherriff's Department, but altered the legal theory upon which his complaint was based.⁴ Specifically, the "First Amended Complaint," rather than being based upon the ten-day limit allegedly conveyed to Nichols by Judge Planchard, was based instead upon article 273 of the Louisiana Code of Criminal Procedure, which states that if a fugitive from justice waives the issuance and service of an extradition warrant in writing, "the judge shall direct the officer having the person in custody to deliver him immediately to the accredited agent of the demanding state." LA. CODE CRIM. P. ANN. art. 273. The revised complaint also avers that "[p]laintiff's constitutional right to life, liberty, and the pursuit of happiness were violated during the 30 days he was held captive against his will and the laws of the state of Louisiana."

On May 23, 1994, the defendants moved for summary judgment asserting that, based upon the facts set forth by Nichols, the Louisiana extradition law had been complied with and no violation of federal rights had occurred. On August 11, 1994, the district court issued a memorandum ruling which granted the defendants' motion for summary judgment. The district court found that, pursuant to article 270 of the Louisiana Code of Criminal Procedure, Judge Planchard had the authority to commit Nichols for a period of thirty days. Thus, even if Judge Planchard or

⁴ Nichols' "First Amended Complaint" does not mention the other defendants identified in the other complaints: "Mr. LaBlanc." "Shift Sgt. (Larry)," "Shift Supervisor (Coach)," or "Mr. Teat."

Calcasieu Parish officials had mistakenly informed Nichols that the maximum holding period was ten days, such mistaken information did not alter the fact that the statute permitted Nichols to be held for thirty days. Accordingly, the failure of the defendants to release Nichols within ten days did not give rise to a constitutional violation.

On September 6, 1994, Nichols filed a timely appeal to this court, alleging that: (1) his Sixth Amendment right to counsel was violated by Judge Planchard's refusal to appoint counsel to assist Nichols in deciding whether to waive extradition; (2) his right to due process was violated by Judge Planchard's failure to inform Nichols of his right to the issuance and service of a warrant of extradition and to an extradition hearing; (3) his right to due process was violated by the failure of Judge Planchard, Sheriff McElveen, and the Calcasieu Parish Sherriff's Office immediately to turn Nichols over to the Texas authorities upon Nichols' waiver of extradition.⁵

II. STANDARD OF REVIEW

⁵ In his reply brief, Nichols also alleges: (1) that the Texas warrant for aggravated robbery was stale by the time that he was arrested in Louisiana; (2) that the Texas warrant was invalid because it was not properly authenticated; (3) and that the Texas Department of Criminal Justice, Institutional Division, has violated his constitutional rights by failing to provide him with postage, mailing materials, and access to the law library. As these issues were not raised in the court below, this court will not address them for the first time on appeal. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

We note initially that briefs and papers of pro se litigants are to be construed more liberally than those filed by counsel. Securities and Exch. Comm'n v. AMX Int'l, Inc., 7 F.3d 71, 75 (5th Cir. 1993). We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. Norman v. Apache Corp., 19 F.3d 1017, 1021 (5th Cir. 1994); Conkling v. Turner, 18 F.3d 1285, 1295 (5th Cir. 1994). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). In our review of a grant of summary judgment, we view the evidence available to the district court in the light most favorable to Nichols, the non-movant. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994).

Under Rule 56(c), the party moving for summary judgment bears the initial burden of informing the district court of the basis for its motion and identifying the portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of a genuine issue for trial. Matsushita Elect. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-87 (1986). The burden on the non-moving party is to do more than simply show that there is some

metaphysical doubt as to the material facts. Id. at 586. Summary judgment may be affirmed on any ground that was raised to the district court and upon which both parties had the opportunity to present evidence. Conkling v. Turner, 18 F.3d 1285, 1296 n.9 (5th Cir. 1994).

III. ANALYSIS

A. Claims Against Judge Planchard.

Construing Nichols' pro se complaint liberally, he raises numerous claims against Judge Planchard, the state court judge who accepted Nichols' waiver of extradition. Specifically, Nichols avers that Judge Planchard violated his constitutional rights by failing to inform him of his right to an extradition hearing, failing to honor Nichols' request to consult with counsel prior to waiving extradition, and failing immediately to turn Nichols over to Texas authorities upon Nichols' waiver of extradition.

As an initial matter, although the magistrate judge ordered that service be made on the defendants, the record does not reveal that Judge Planchard was ever served. The lack of service does not, however, preclude the disposition of these claims because the district court correctly determined that Nichols' claims against Judge Planchard were "groundless." Nichols' claims are all directed toward judicial acts taken by Judge Planchard within the scope of his duty as a state judge; as such, Judge Planchard enjoys absolute immunity from suits for damages.

See Stump v. Sparkman, 435 U.S. 349, 357-59 (1978); see also Malina v. Gonzales, 994 F.2d 1121, 1124 (5th Cir. 1993) (listing factors to be considered in determining whether absolute immunity applies).

B. Claims Against Sherriff McElveen in his Individual Capacity.

Supervisory officials such as Sherriff McElveen may be held liable under § 1983 if the plaintiff proves either that the supervisor was personally involved in the constitutional deprivation or that there is a sufficient causal connection between the supervisor's conduct and the constitutional deprivation. This standard of liability derives from the language of § 1983, which provides a remedy against anyone who, under color of state law, "causes" another to be subjected to a violation of his or her constitutional rights. Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 454 n.8 (5th Cir. 1994) (en banc) (citing City of Canton v. Harris, 489 U.S. 378, 388 n.8. (1989)), petition for cert. filed, June 1, 1994.

In the case at hand, Nichols has not alleged any specific acts performed personally by Sherriff McElveen that caused the alleged constitutional deprivations. Thus, he has not provided any factual basis to support a finding of supervisory liability and there was no error in granting summary judgment for Sheriff McElveen in his individual capacity.

C. Claims Against Sherriff McElveen in his Official Capacity and Against the Calcasieu Parish Sherriff's Office.

While Nichols' complaints specifically identify numerous individuals alleged to have violated his constitutional rights, only Sherriff McElveen and the Calcasieu Parish Sherriff's Office were served with summons; thus, they are the only defendants properly before the court. Construing Nichols' pro se complaint liberally, he alleges that his constitutional rights were violated because of the actions of Sherriff McElveen in his official capacity and the policies of the Calcasieu Parish Sherriff's Office.

The district court correctly concluded that these claims were governed by Monell v. Department of Social Services., 436 U.S. 658 (1978), in which the Supreme Court held that local governmental bodies-- such as Parishes-- are "persons" which can be sued under § 1983. Before liability can be imposed upon a local governmental body, however, Monell requires the plaintiff to prove that it is the "execution of a government's policy or custom . . . [which] inflicts the injury" Id. at 694. Thus, under Monell, it is not enough for a § 1983 plaintiff to prove that the plaintiff has been deprived of a constitutional right by local governmental officials; he must also prove that the alleged deprivation was caused by "a policy statement, ordinance, regulation, or decision official adopted and promulgated by that body's officers." Id. at 690.

In the case at hand, the local governmental policy alleged to have caused Nichols' constitutional injury is the ten-day time limit for extradition of prisoners. The summary judgment

evidence available to the district court included an affidavit from the supervisor of the warrants division of the Calcasieu Parish Sherriff's Office, which stated that

when an individual in custody of the Calcasieu Parish Sherriff's Office waives extradition, it is the policy of the warrants division to send a teletype to the appropriate authority requesting they take custody of the said subject within ten (10) days. This request is made solely to encourage such agencies to promptly take custody of such subjects in order that space in the Calcasieu Correctional Center may be freed up for additional offenders. It is not a time period mandated by law.

While this affidavit does reflect that the Calcasieu Parish Sherriff's Office had adopted a policy or custom of requesting that prisoners be extradited within ten days, the failure to abide by this policy or custom does not give rise to a deprivation of federal rights. Article four, section two, clause two of the United States Constitution states:

A person charged in any State with Treason, Felony, or other Crime who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Const. art. IV, § 2, cl. 2. The plain language of the Extradition Clause reveals that its purpose is to enable the states to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. Michigan v. Doran, 439 U.S. 282, 287 (1978). Thus, we have held that the Extradition Clause confers no rights on the individual being sought. See Siegel v. Edwards, 566 F.2d 958, 960 (5th Cir. 1978); accord Giano v. Martino, 673 F. Supp. 92, 93 (E.D.N.Y.

1987), aff'd, 835 F.2d 1429 (2d Cir. 1987) (unpublished opinion); Johnson v. Buie, 312 F. Supp. 1349, 1350-51 (W.D. Mo. 1970).⁶

The Due Process Clause likewise offers no remedy for Nichols. Under the Due Process Clause, there is an outside limit on the duration that an asylum state may detain a prisoner who has waived extradition if the asylum state has no independent charges pending against the prisoner. Cf. Baker v. McCollan, 443 U.S. 137, 145 (1979) ("mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of time deprive the accused of `liberty . . . without due process of law'.") Viewing the facts in the light most favorable to Nichols, the non-movant, he was detained for a total of thirty-one days (March 16, 1993 to April 16, 1993)⁷-- twenty-nine days of which (March 18, 1993 to April 16, 1993) were in the custody and control of the defendants. The Calcasieu Parish

⁶ Even assuming arguendo that the Extradition Clause is a substantive source of rights, our conclusion would be the same because there has been no violation of the Extradition Clause or the federal implementing statute under the facts of this case. The Extradition Clause itself does not place a temporal limit on the holding of prisoners pending extradition. Likewise, there has been no violation of the federal implementing statute because that statute merely permits, but does not require, require asylum states to release prisoners after thirty days. In addition, we note that neither the Extradition Clause nor the federal implementing statute are arguably applicable in this case because, due to Nichols' waiver of extradition, Texas never formally "demanded" extradition.

⁷ Nichols asserts that he was arrested by Vinton City Police Officers on March 15, 1993. However, the district court specifically found that Nichols was arrested on March 16, 1993, and Nichols has proffered no evidence that this factual finding is clearly erroneous. In any event, whichever date is used, it does not alter our conclusions.

Sherriff's Office telexed the Orange, Texas authorities on the same day that Nichols arrived and requested that they pick Nichols up within ten days to make room for other prisoners. Under these bare facts, it is clear that Nichols has not proffered any evidence that Sherriff McElveen or the Calcasieu Parish Sherriff's Office acted with anything other than ordinary negligence in failing to arrange for a speedier extradition. In Martin v. Dallas County, 822 F.2d 553 (5th Cir. 1987), we held that

no constitutional claim may be asserted by a plaintiff who was deprived of his liberty or property by negligent or intentional conduct of public officials, unless the state procedures under which those officials acted are unconstitutional or state law fails to afford an adequate post-deprivation remedy for their conduct.

Martin v. Dallas County, 822 F.2d 553, 555 (5th Cir. 1987); accord Daniels v. Williams, 474 U.S. 335-36 (1986) ("Jailers may owe a special duty of care to those in their custody under state tort law . . . but . . . we reject the contention that the Due Process Clause of the Fourteenth Amendment embraces such a tort law concept."). In this case, we have determined that the Louisiana procedures under which the defendants acted are constitutional. Furthermore, Louisiana law provides an adequate post-deprivation remedy in the form of a tort claim for false imprisonment. See Kyle v. City of New Orleans, 353 So.2d 959 (La. 1977) (false imprisonment occurs when one restrains another against his will and without legal authority); Hayes v. Kelly, 625 So.2d 628 (La. Ct. App. 1993) (sherriff liable for false imprisonment for detaining plaintiff for six months after he knew

or should have known that plaintiff did not commit the crime charged), cert. denied, 633 So.2d 171 (La. 1994). If Nichols' confinement was, as he alleges, violative of articles 270 or 273 of the Louisiana Code of Criminal Procedure, then he would have an adequate remedy via a tort claim for false imprisonment.

Nichols also alleges that he is entitled to relief under § 1983 because the defendants violated articles 270 and 273 of the Louisiana Code of Criminal Procedure. Article 270 states that

[t]he judge shall commit the accused for thirty days if it appears, after a hearing in open court, that there is reasonable ground to hold him awaiting extradition. . . . The accused shall be imprisoned in the parish jail until the term of his commitment expires or he is otherwise legally discharged

LA. CODE CRIM. P. ANN. art. 270.

Article 273 states that a fugitive from justice may waive the issuance and service of an extradition warrant "by consenting in writing in the presence of the judge to return to the demanding state." LA. CODE CRIM. P. ANN. art. 273(A). Article 273 also states that, if such a waiver of extradition has been obtained, "the judge shall direct the officer having the person in custody to deliver him immediately to the accredited agent of the demanding state, with a copy of the waiver." Id.

Even assuming arguendo that articles 270 or 273 were violated by the defendants, such a violation of *Louisiana* law does not give rise to a cause of action under § 1983. Section 1983 does not provide a remedy for every violation of state statutes implementing the Extradition Clause and the federal statute. Brown v. Nutsch, 619 F.2d 758, 764 n.8 (8th Cir. 1980).

Only those violations of state statutes which also violate the minimal requirements of the constitution or federal statutes can give rise to a § 1983 claim. Id. (citing Paul v. Davis, 424 U.S. 693, 699-700 (1976)). As Nichols has not set forth facts to create a genuine issue as to the deprivation of *federally protected* rights, summary judgment in favor of the defendants was appropriate. See Lott v. Heyd, 315 F.2d 350, 351 (5th Cir. 1963) (holding that violation of Louisiana extradition implementing statute did not give rise to violation of federally protected rights upon which to grant habeas corpus).

IV. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.