

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50361
Conference Calendar

HAROLD L. WASHINGTON,

Plaintiff-Appellant,

versus

THE COURT OF CRIMINAL APPEALS
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-94-CA-083-JN
- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Harold L. Washington filed an in forma pauperis (IFP) civil rights complaint alleging that he was denied a free and timely copy of a mandate from the Court of Criminal Appeals. The district court dismissed the complaint as frivolous.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id. The district court dismissed Washington's complaint on immunity grounds, but this Court may affirm the judgment on alternative grounds. Matthews v. Wozencraft, 15 F.3d 432, 439 (5th Cir. 1994).

In his objections to the magistrate judge's report, Washington amended his complaint to name the individual court clerks as the defendants. A party may amend a pleading at anytime before a responsive pleading is filed. Fed. R. Civ. P. 15(a); Willis v. Collins, 989 F.2d 187, 189 (5th Cir. 1993). The defendants were never served and Washington could amend his complaint once as a matter of right.

Washington did not specify what type of declaratory relief he sought in his complaint, but apparently he sought to have the federal court order the state defendants to provide him with a free copy of the mandate from the Court of Criminal Appeals. Washington's complaint should be construed as a petition for writ of mandamus. See Moyer v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1275 (5th Cir. 1973). The federal courts do not have the power to order state courts or their judicial officers to perform their duties when mandamus is the only relief requested. Id. at 1276. The judgment of the district court is AFFIRMED.