

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50528
Conference Calendar

ALBERTO J. LEVARIO,

Plaintiff-Appellant,

versus

STATE BAR OF TEXAS ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-94-CA-439
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

A movant for in forma pauperis (IFP) status on appeal must show that he is a pauper and that he will present a non-frivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). In the absence of a nonfrivolous issue, the appeal will be dismissed. 5th Cir. R. 42.2.

Absent specific law providing otherwise, federal district courts lack jurisdiction to entertain collateral attacks on state-court judgments. Liedtke v. State Bar of Texas, 18 F.3d

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

315, 317 (5th Cir. 1994). "Constitutional questions arising in state proceedings are to be resolved by the state courts." Id. If a state trial court errs the appropriate avenue is review by the state appellate courts. Thereafter, the sole federal relief is an application for a writ of certiorari to the United States Supreme Court. Casting a complaint in the form of a civil rights action cannot circumvent this doctrine. Id.

Levario's federal suit is a patent attempt to circumvent the Texas state-court judgment against him. Levario was never employed by the State Bar of Texas, nor did he seek employment there. Title VII has nothing to do with Levario's complaints. Levario's sole purpose is to review the state trial-court decision and obtain relief from the judgment against him. Levario's proper avenue for relief from the judgment was through the appropriate state appellate courts. Thereafter, he could have sought a writ of certiorari from the Supreme Court. Considering the district court's recognition that Levario was attempting to use the federal court to review the state-court judgment against him, we assume that the district court determined that Levario was a pauper prior to or simultaneously with its dismissal order. The district court had authority to dismiss under 28 U.S.C. § 1915(d) prior to service for frivolousness. Holloway v. Gunnell, 685 F.2d 150, 152 (5th Cir.

1982).** Levario does not present a nonfrivolous issue for appeal.

The motion for leave to appeal IFP is DENIED, and the APPEAL DISMISSED as frivolous. See 5th Cir. R. 42.2.

** The district court is advised that the correct procedure is to allow the complaint to be filed, if the economic criteria for IFP status are met, and then dismiss the case if it is determined to be frivolous under § 1915(d). See Mitchell v. Sheriff Dep't, Lubbock County, 995 F.2d 60, 62 n.1 (5th Cir. 1993).