

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-20381  
Conference Calendar

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J. LEON GONZALEZ LONGORIA,

Plaintiff-Appellant,

versus

STANLEY G. SCHNEIDER, TROY  
MCKINNEY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-96-744  
- - - - -

August 20, 1996

Before KING, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:\*

J. Leon Gonzalez Longoria, federal prisoner #59761-079, appeals the dismissal of his civil suit pursuant to 28 U.S.C. § 1915(d), now § 1915(e)(2)(B)(i). Longoria asserts that the district court erred in characterizing his lawsuit as having been brought under 42 U.S.C. § 1983. He contends that he brought a

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

claim of legal malpractice against his attorneys under diversity jurisdiction.

Assuming arguendo that Longoria's complaint alleged legal malpractice under Texas law, his claim lacks merit. Longoria does not have a cause of action under Texas law because he has not been exonerated and his actions are the sole, proximate cause of his indictment and conviction. See Peller v. Hughes & Luce, 909 S.W.2d 494, 498 (Tex. 1995). For this reason, we AFFIRM the judgment of the district court dismissing the action as frivolous. The motion to stay the appeal is DENIED.

AFFIRMED.