

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60562
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 26, 2019

Lyle W. Cayce
Clerk

BILDRICK JACKSON,

Plaintiff-Appellant

v.

MICHAEL K. RANDOLPH, Mississippi Supreme Court Justice; JAMES W. KITCHENS, Mississippi Supreme Court Justice; JAMES D. MAXWELL, Associate Mississippi Supreme Court Justice,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:18-CV-142

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

In 2002, Bildrick Jackson, Mississippi prisoner # L0372, was convicted of the murder of Natalia Little and sentenced to life imprisonment. He appeals the magistrate judge's final judgment dismissing his 42 U.S.C. § 1983 complaint against Mississippi Supreme Court Justices Michael K. Randolph, James W. Kitchens, and James D. Maxwell, in which he alleged that the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-60562

defendants' denial of his request for postconviction DNA testing violated his procedural due process rights. The magistrate judge dismissed Jackson's § 1983 complaint with prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1). We review such dismissals de novo, using the same standard applicable to dismissals under Federal Rule of Civil Procedure 12(b)(6). *Legate v. Livingston*, 822 F.3d 207, 209-10 (5th Cir. 2016).

Jackson acknowledges that the named defendants were not proper parties to the suit. Nevertheless, he argues that the magistrate judge erred in sua sponte dismissing his complaint without conducting a *Spears*¹ hearing, requesting a more definite statement through a questionnaire, or affording him an opportunity to amend his complaint to cure the deficiencies. According to Jackson, an amendment would not have been futile because his allegations, if developed properly and adequately remedied, would have been sufficient to state a claim upon which relief may be granted. Specifically, he would have substituted the proper defendant and clarified that he was not challenging the Mississippi Supreme Court's decision itself but, rather, the adequacy of Mississippi's postconviction relief procedures to vindicate the substantive right provided.

To state a claim under § 1983, a plaintiff must allege a violation of a right secured by the Constitution or laws of the United States and that the deprivation was committed by a person acting under color of state law. *Sw. Bell Tel., LP v. City of Houston*, 529 F.3d 257, 260 (5th Cir. 2008). While there is no freestanding right for a convicted defendant to obtain evidence for postconviction DNA testing, such a right may be created by state law. *Dist.*

¹ *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), *overruled on other grounds by* *Neitzke v. Williams*, 490 U.S. 319 (1989).

No. 18-60562

Attorney's Office for the Third Jud. Dist. v. Osborne, 557 U.S. 52, 67-73 (2009). Mississippi's postconviction statutes allow petitioners to file a motion to request forensic DNA testing of biological evidence. MISS. CODE ANN. § 99-39-5(1)(f). Among other requirements, the petitioner must establish "that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution." *Id.* "Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided." *Osborne*, 557 U.S. at 69.

Jackson's allegations do not support a claim that Mississippi's postconviction procedures were so "fundamentally inadequate" as to fail to protect his right to due process or that the Mississippi Supreme Court's denial of his request for postconviction DNA testing "offend[ed] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id.* The record reflects that the Mississippi Supreme Court considered Jackson's arguments in support of his request for postconviction DNA testing and the State's response. Further, Jackson's allegations do not show a reasonable probability that he would not have been convicted of Little's murder. *See* § 99-39-5(1)(f).

Aside from naming the wrong defendants, the record reflects that Jackson pleaded his best case and that any error in not allowing him to amend his complaint was harmless. *See Bazrowx v. Scott*, 136 F.3d 1053, 1054-55 (5th Cir. 1998). Therefore, the magistrate judge did not err in dismissing Jackson's complaint for failure to state a claim upon which relief may be granted. *See Legate*, 822 F.3d at 209-10.

AFFIRMED.