

United States Court of Appeals for the Fifth Circuit

No. 24-50129
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 11, 2024

Lyle W. Cayce
Clerk

JESSIE MACWILLIAMS,

Plaintiff—Appellant,

versus

SALLY UNCAPHER, *District Attorney's Office*; BIANCA PENA,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-101

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Jessie MacWilliams, a Bexar County pretrial detainee, seeks to proceed in forma pauperis (IFP) on appeal from the dismissal of his 42 U.S.C. § 1983 complaint against Bexar County assistant district attorneys Sally Uncapher and Bianca Pena. The district court dismissed the action as malicious under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1) because the

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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claims raised were duplicative of claims raised in a previous § 1983 action filed by MacWilliams.

In his IFP motion, MacWilliams argues that he filed the second suit because he lacked certain legal knowledge when he amended his previous § 1983 complaint to replace defendants Uncapher and Pena with the State of Texas. He contends that the instant case is “slightly different,” noting that whereas the previous case alleged “malicious prosecution,” the instant case alleges “prosecution misconduct” based on the prosecution’s fabrication of video evidence against him. MacWilliams has also filed a motion to file a supplemental brief, which is DENIED.

An action may be dismissed as malicious or frivolous if it duplicates claims raised by the same plaintiff in previous or pending litigation. *See Wilson v. Lynaugh*, 878 F.2d 846, 849-50 (5th Cir. 1989); *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993). Although MacWilliams attempts to cast his claims as “slightly different” than those raised in his prior § 1983 action, the claims in both actions revolve around the same operative facts and allegations. *See Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). Additionally, although MacWilliams’s amended complaint in the previous § 1983 action no longer named Uncapher and Pena as defendants, an action raising the same factual allegations as a prior action is duplicative even if the plaintiff names different defendants in the second action. *See id.*

MacWilliams fails to demonstrate that his appeal will involve a nonfrivolous issue, and thus the IFP motion is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous and the district court’s dismissal of the complaint as malicious each count as strikes for purposes of

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28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 534, 537-40 (2015). Additionally, the district court has dismissed as frivolous at least one prior suit filed by MacWilliams. *See MacWilliams v. State Farm Ins. Co.*, No. 5:23-CV-885 (W.D. Tex. Aug. 3, 2023). Because he now has at least three strikes, MacWilliams is BARRED from proceeding IFP in any civil action or appeal filed in a court of the United States while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g). He is WARNED that any pending or future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction may subject him to additional sanctions, and he is DIRECTED to review all pending matters and move to dismiss any that are frivolous, repetitive, or otherwise abusive.