

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1640
Conference Calendar

CHARLES ALLEN KING,

Plaintiff-Appellant,

versus

JOE CHEYNE, Scurry County
Sheriff Department, ET AL.,

Defendants-Appellants.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-141-C
- - - - -

(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

BY THE COURT:

This case is here on a motion to proceed in forma pauperis (IFP) on appeal. This Court may authorize King to proceed in forma pauperis on appeal if he is unable to pay the costs of the appeal and the appeal is taken in good faith, i.e., the appeal presents nonfrivolous issues. 28 U.S.C. § 1915(a); Holmes v. Hardy, 852 F.2d 151, 153 (5th Cir.), cert. denied, 488 U.S. 931 (1988).

Charles Allen King filed this civil rights action under 42 U.S.C. § 1983 alleging that the defendants conspired to violate his constitutional rights by fabricating evidence used to obtain a conviction for a crime he never committed. The district court

dismissed his suit as frivolous under 28 U.S.C. § 1915(d), holding that King's claim for conspiracy to violate his civil rights was properly a § 1985 claim, not a § 1983 claim, and that King had not alleged the class-based animus required under § 1985.

A § 1915(d) dismissal is reviewed for abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992). A district court may dismiss an in forma pauperis complaint if it is frivolous, that is, if it lacks an arguable basis either in law or in fact. Id.

King's appeal is not frivolous. A plaintiff may assert conspiracy claims under § 1983. Pfannstiel v. City of Marion, 918 F.2d 1178, 1187 (5th Cir. 1990). The district court's dismissal was based on an erroneous legal conclusion and was an abuse of discretion. See Moore v. Mabus, 976 F.2d 268, 270 (5th Cir. 1992).

King's IFP motion shows that he is incarcerated in the Texas Department of Criminal Justice - Institutional Division and that he has no money in his inmate trust fund. He has established pauper status.

IT IS ORDERED that King's motion for IFP is GRANTED; the judgment of the district court is VACATED, and this case is REMANDED for further proceedings.