

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10126  
Conference Calendar

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JAMES ALLEN TURNER,

Plaintiff-Appellant,

versus

WILLIAM KENT PASCHAL, Attorney  
at Law, and JAMES FARREN, Assistant  
District Attorney,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:92-CV-9

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(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

A complaint filed in forma pauperis may be dismissed as frivolous if it lacks an arguable basis in fact and law. A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Assistant District Attorney Farren is absolutely immune from a suit for damages because the plea negotiations of which Texas prisoner James Allen Turner complains were performed solely

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

within the scope of Farren's official duties. Young v. Biggers, 938 F.2d 565, 569 (5th Cir. 1991); Humble v. Foreman, 563 F.2d 780, 781 (5th Cir. 1977).

Defendant Paschal, Turner's court-appointed attorney, is not a state actor for purposes of § 1983 liability. Polk County v. Dodson, 454 U.S. 312, 324-25, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981). Nevertheless, he could be liable under § 1983 if he conspired with District Attorney Farren to act under color of state law to deprive Turner of a constitutional right. Daniel v. Ferguson, 839 F.2d 1124, 1131 (5th Cir. 1988). Merely conclusional allegations of conspiracy, however, will not support an action under § 1983. Wilson v. Budney, 976 F.2d 957, 958 (5th Cir. 1992). As Turner alleged no facts to support his allegation of conspiracy, the district court did not abuse its discretion by dismissing the claims against Paschal. Ancar, 964 F.2d at 468.

Turner's suggestion that the defendants are liable because they were negligent in the negotiation of the plea bargain is meritless. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

Turner was not entitled to conduct discovery prior to dismissal of the complaint. See 28 U.S.C. § 1915(d).

Because Assistant District Attorney Farren is entitled to absolute immunity, the judgment of the district court is MODIFIED to DISMISS WITH PREJUDICE Turner's claims against District Attorney Farren. See Graves v. Hampton, 1 F.3d 315, 318-19 (5th Cir. 1993).

AFFIRMED AS MODIFIED.