

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30463
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 13, 2018

Lyle W. Cayce
Clerk

MARTY J. HEBERT,

Plaintiff-Appellant

v.

STATE OF LOUISIANA,

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:17-CV-1620

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Marty J. Hebert, Louisiana prisoner # 368170, is serving a life sentence, which was imposed following his jury trial conviction of second degree murder. He appeals the district court's dismissal, for failure to state a claim on which relief may be granted, of his request for a writ of mandamus. Hebert, who contends that the doctor who conducted an autopsy of the decedent gave false and misleading testimony, requested that the district court order 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Louisiana trial court to provide him a copy of the transcript of the doctor's grand jury testimony.

We review de novo the dismissal of an action for failure to state a claim. *See Emps.' Ret. Sys. v. Whole Foods Mkt., Inc.*, 905 F.3d 892, 899 (5th Cir. 2018). A district court should dismiss a case for failure to state a claim where the plaintiff has failed to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). We accept "all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 816 (5th Cir. 2012) (internal quotation marks and citation omitted).

Hebert contends that the doctor changed his autopsy findings to fit the prosecution's theory of the case, violating his right to a fair trial, and that his indictment was secured based on the doctor's false and misleading grand jury testimony. Noting that he needs the grand jury transcript to attack his conviction, Hebert argues that the state trial court improperly denied his transcript request. He contends that the state court's refusal to order that he be provided a copy of the grand jury transcript violates his constitutional rights, and he maintains that such a constitutional violation can be corrected via federal mandamus relief.

"[A] federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought." *Moyle v. Clerk, DeKalb Cty. Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973). The district court therefore lacked the authority to compel the state court to provide the relief that Hebert requested. *See id.* Therefore, the district court did not err in dismissing the action for failure to state a claim. *See Bell Atl. Corp.*, 544 U.S. at 570.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

MARTY HEBERT

VS.

STATE OF LOUISIANA

CIVIL ACTION NO. 6:17-1620

JUDGE ROBERT G. JAMES

MAGISTRATE JUDGE WHITEHURST

JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent review of the record including the objections filed by petitioner, and having determined that the findings and recommendation are correct under the applicable law;

IT IS ORDERED, ADJUDGED AND DECREED that the petition for writ of mandamus be **DENIED AND DISMISSED WITH PREJUDICE** for failing to state a claim for which relief may be granted.

MONROE, LOUISIANA, on this 5th day of April, 2018.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

MARTY HEBERT

CIVIL ACTION NO. 6:17-cv-1620

VS.

SECTION P

UNASSIGNED DISTRICT JUDGE

STATE OF LOUISIANA

MAGISTRATE JUDGE WHITEHURST

REPORT AND RECOMMENDATION

Pro se petitioner Marty Hebert, an inmate at the Louisiana State Penitentiary, filed the instant petition for writ of mandamus on December 11, 2017. Petitioner asks this Court to order the Sixteenth Judicial District Court for the Parish of St. Mary to provide him with a copy of grand jury testimony.

Law and Analysis

Petitioner is advised – federal courts may not interfere with the state courts’ application of state law. *cf. Smith v. McCotter*, 786 F.2d 697, 700 (5th Cir.1986) (“We do not sit as a ‘super’ state supreme court. (citation omitted) Consequently, we decide ... issues only to the extent that federal constitutional issues are implicated and we refuse to act as an arm of the [state court of appeals]...”). Contrary to petitioner’s mistaken belief, this court holds no supervisory power over state judicial proceedings and may intervene only to correct errors of constitutional dimensions.

Smith v. Phillips, 455 U.S. 209, 221, 102 S.Ct. 940, 948, 71 L.Ed.2d 78 (1982).

Further, to the extent that petitioner seeks to invoke the federal *mandamus* jurisdiction of this court, such a claim is likewise subject to dismissal. Title 28 U.S.C. § 1361 provides in pertinent part, “[D]istrict courts ... have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” (emphasis supplied) Neither the Sixteenth Judicial District Court nor the St. Mary Parish District Attorney nor the State of Louisiana are “officers or employees of the United States.” Plaintiff is clearly not entitled to federal *mandamus* relief.

Conclusion and Recommendation

Therefore,

IT IS RECOMMENDED THAT the instant petition for writ of mandamus be **DISMISSED WITH PREJUDICE** for failing to state a claim for which relief may be granted.

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party’s objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of

filings.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See, *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Lafayette, Louisiana, March 12, 2018.



CAROL B. WHITEHURST
UNITED STATES MAGISTRATE JUDGE