Appendices

Copie

United States Court of Appeals for the Fifth Circuit

No. 19-31019

EARTON SMITH,

Plaintiff—Appellant,

versus

JOHN SCHUYLER MARVIN,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:19-CV-1053

Before HO, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Louisiana prisoner Earton Smith sued District Attorney John Schuyler Marvin under 42 U.S.C. § 1983 for due process violations related to Smith's application for state habeas relief. The district court dismissed the suit for lack of jurisdiction. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Exhibit A.1

I.

A Louisiana jury convicted Smith of aggravated burglary in 2007 following an incident that occurred in 2006. *State v. Smith*, 47 So.3d 553, 554 (La. Ct. App. 2010). Smith was initially sentenced to thirty years in prison. *Id.* Then the State adjudicated him a habitual offender, and Smith received a new sentence of life in prison without possibility of parole. *Id.* His attempts to obtain state and federal habeas relief in 2011 and 2012 were unsuccessful.

In 2017, Smith filed another application for state habeas relief. He claimed he had discovered two affidavits from a police officer involved in the 2006 arrest that contradicted testimony given at trial. District Attorney Marvin filed procedural objections contending that Smith's application was successive and barred by Louisiana's two-year limitations period for postconviction relief. *See* LA. CODE CRIM. PROC. arts. 930.4, 930.8. Smith responded that the limitations period did not apply because he based his claim on facts in the affidavits not known to him or his attorney at trial. *See id.* art. 930.8A(1). Marvin disagreed and asserted that Smith had received the affidavits during the state-court litigation. The trial court rejected Smith's application as successive and untimely. The state appellate court and the Louisiana Supreme Court declined to overturn the trial court's ruling.

Smith filed this § 1983 action against Marvin a few months later. Proceeding pro se, Smith alleged that Marvin had deprived him of due process by "using . . . state procedur[es] to deny [him] postconviction relief." Smith faulted Marvin for objecting to his application and ignoring the "new facts exception" to the limitations period, which Smith thought applicable. But Smith also claimed he "d[id] not challenge the prosecutor's conduct or the Louisiana[] state court's decision." Instead, he "assert[ed] that he challenges Louisiana's postconviction exceptions to the [limitations] period . . . as construed by the Louisiana courts." Smith sought an injunction

ordering Marvin "to conduct an evidentiary hearing . . . at which [the] district court will determine" whether an exception to the limitations period applies.

A magistrate judge reviewed Smith's complaint and recommended dismissing it for lack of jurisdiction. The magistrate judge reasoned that though Smith purported to challenge the constitutionality of the state limitations statute itself, he "actually s[ought] a writ of mandamus to order [Marvin] to conduct evidentiary hearings regarding his application for post-conviction relief." It concluded that such a request was barred by the principle that district courts "lack[] jurisdiction to issue a writ of mandamus to compel [state officials] to perform an alleged duty."

The district court agreed with the magistrate judge and dismissed Smith's suit for lack of jurisdiction. Smith timely appealed. Our review is de novo. *Lefebure v. D'Aquilla*, 987 F.3d 446, 448 (5th Cir. 2021).

II.

We have held that "a federal court lacks the general power to issue writs of mandamus to direct state . . . officers in the performance of their duties where mandamus is the only relief sought." *Moye v. Clerk, Dekalb Cnty. Superior Ct.*, 474 F.2d 1275, 1276 (5th Cir. 1973) (per curiam). And we recently applied this principle to a prisoner like Smith who alleged that state officials "violated his right to due process in relation to his state habeas applications." *See Thoele v. Hamlin*, 747 F. App'x 242, 242 (5th Cir. 2019) (per curiam) (applying *Moye*).

Smith contends the *Moye* principle does not apply because his complaint only "challeng[es] Louisiana's postconviction statute" and "does not challenge the conduct of the defendant[] or the decisions of the Louisiana state courts" in administering state law. The magistrate judge and the district court understandably rejected that contention. A central theme in Smith's complaint is that Marvin and the state court misapplied state law. And the

injunctive relief he sought was an evidentiary hearing conducted "pursuant to" a state statute. *But see Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (holding state sovereign immunity prohibits federal courts from ordering state officials to comply with state law). Nevertheless, we assume for the sake of argument that Smith's complaint directly challenges Louisiana's postconviction regime. *Cf. Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018) ("If a complaint is written *pro se*, we are to give it a liberal construction.").

That assumption does not get him far. Smith's theory is that his complaint cannot have a jurisdictional defect because it resembles the complaint upheld in *Skinner v. Switzer*, 562 U.S. 521 (2011). The plaintiff in *Skinner* sued a district attorney seeking access to postconviction DNA testing that a state statute did not permit. *Id.* at 527–29. The district attorney interpreted Skinner's complaint to seek federal review of a state-court decision in contravention of the *Rooker-Feldman* doctrine. *Id.* at 531–32. But Skinner's counsel clarified that the "gist of [his] due process claim" was not a "challenge [to] the prosecutor's conduct or the decisions reached by the [state court]." *Id.* at 530. Skinner instead challenged the "postconviction DNA statute" itself. *Id.* In light of that clarification, the Supreme Court held that "[t]here was . . . no lack of subject-matter jurisdiction over Skinner's federal suit." *Id.* at 533.

Skinner's jurisdictional holding does not control this case. While it remains true that a federal plaintiff can generally challenge "a statute or rule governing [a state-court] decision," *id.* at 532, he still must have Article III standing to do so, *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992). Standing was not a problem in *Skinner* because the plaintiff sought relief against a defendant who caused an injury that a court could redress: Skinner wanted DNA tests for certain evidence, the district attorney refused to surrender that evidence, and a court could order her to surrender it. *See* 562

U.S. at 529; *Lujan*, 504 U.S. at 560–61. But in this case, Smith alleges an injury that District Attorney Marvin did not cause and the court cannot redress. If Smith's claim is that state law permitted him to file his habeas application, the erroneous ruling came from the state judge and not from Marvin. Any injury is therefore "the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (quotation omitted). And if Smith's claim is that state law unconstitutionally prohibited him from filing his habeas application, there is nothing we could order Marvin to do that would change Smith's ability to file it. It is therefore impossible for Smith's injury to "be redressed by a favorable decision." *Id.* at 561 (quotation omitted).

AFFIRMED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

EARTON SMTIH	**CIVIL ACTION NO. 19-1053-P**
VERSUS	**JUDGE FOOTE**
JOHN SCHUYLER MARVIN	**MAGISTRATE JUDGE HORNSBY**

REPORT AND RECOMMENDATION

In accordance with the standing order of this court, this matter was referred to the undersigned Magistrate Judge for review, report, and recommendation.

STATEMENT OF CLAIM

Before the court is a civil action filed in forma pauperis by pro se plaintiff Earton Smith, ("Plaintiff"), pursuant to 42 U.S.C. § 1983. This complaint was received and filed in this court on August 5, 2019. Plaintiff is incarcerated in the Louisiana State Penitentiary in Angola, Louisiana. He names District Attorney John Schuyler Marvin ("Marvin") as defendant.

Plaintiff claims that on November 29, 2007, he was convicted of aggravated burglary and possession of a firearm by a convicted felon. He claims that on November 20, 2008, the State filed a habitual offender bill against him. Plaintiff claims that on July 21, 2009, he was adjudicated a third felony offender. He claims that on November 6, 2009, his original sentence was vacated, and he was sentenced to a mandatory life sentence at hard labor.

Exhibit, A. 3

Plaintiff claims Marvin denied him due process during the post-conviction relief process. Plaintiff claims that on July 26, 2017, he filed an application for post-conviction relief pursuant to La. C.Cr.P. art. 930.8(A)(1). He claims his application was predicated on a fact not known to him or his attorney at trial and therefore was an exception to the prescriptive period.

Plaintiff claims that on September 25, 2017, Marvin filed procedural objections in response to his application for post-conviction relief. He claims Marvin argued that his application failed to comply with the requirements provided in La. C.Cr.P. art. 930.3 and that the two affidavits dated July 29, 2006 by Officer John Morton were provided to him in the State's discovery response in state court.

He claims that on October 23, 2017, the trial court denied his application as repetitive and untimely. Plaintiff claims that on April 5, 2018, the Louisiana Second Circuit Court of Appeals denied his application for writ of review. He claims that on March 25, 2019, the Supreme Court of Louisiana denied his application for writ of review.

Plaintiff claims that he does not challenge the conduct of the prosecutor or the decisions of the Louisiana state courts. He claims he is challenging Louisiana's post-conviction exceptions to the time period set forth in La. C.Cr.P. art 930.8(A)(1) as construed by the Louisiana state courts.

Accordingly, Plaintiff seeks injunctive relief ordering Defendant to conduct evidentiary hearings to determine if the two affidavits dated July 29, 2006 and the Bossier City Police Department case file rest on facts not known to him and his attorney and any other relief to which he is entitled.

LAW AND ANALYSIS

Plaintiff filed his complaint as one pursuant to 42 U.S.C. § 1983. However, he actually seeks a writ of mandamus to order Defendant to conduct evidentiary hearings regarding his application for post-conviction relief. Mandamus relief is available "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. However, it is well settled that federal courts have no general power to compel action by state officials. See Davis v. Lansing, 851 F.2d 72, 74 (2d Cir. 1988); Van Sickle v. Holloway, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986); Russell v. Knight, 488 F.2d 96, 97 (5th Cir. 1973); Haggard v. State of Tennessee, 421 F. 2d 1384, 1386 (6th Cir. 1970). Because Defendant is not a federal officer, employee or agency, this court lacks jurisdiction to issue a writ of mandamus to compel them to perform an alleged duty. See 28 U.S.C. § 1361.

Accordingly,

IT IS RECOMMENDED that Plaintiff's action be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

OBJECTIONS

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 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, unless an extension of time is granted under Fed. R. Civ. P. 6(b). A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions that were accepted by the district court and to which the aforementioned party did not object. See Douglas v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED, in chambers, in Shreveport, Louisiana, this 22nd day of August 2019.

Mark L. Hornsby
U.S. Magistrate Judge

United States Court of Appeals for the Fifth Circuit

No. 19-31019

EARTON SMITH,

Plaintiff—Appellant,

versus

JOHN SCHUYLER MARVIN,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:19-CV-1053

ON PETITION FOR REHEARING EN BANC

(Opinion 4/1/21, 5 CIR., _____, _____ F.3D _____)

Before HO, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

Exhibit. A. 2