

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0968

JESSE L. MORMON

VERSUS

**JAMES CALDWELL, ATTORNEY GENERAL, STATE OF
LOUISIANA; JAMES LEBLANC, SECRETARY,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS; ROBERT TANNER, WARDEN,
RAYBURN CORRECTIONAL CENTER; WALTER P.
REED, DISTRICT ATTORNEY, TWENTY-SECOND
JUDICIAL DISTRICT; AND TASK FORCE OF ST.
TAMMANY PARISH**

Judgment Rendered: December 22, 2010

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
Docket No. 586,913

Honorable Janice Clark, Judge Presiding

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Jesse L. Mormon
Angie, LA

Plaintiff/Appellant
Pro Se

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a district court's summary dismissal of a prisoner's suit for failure to state a cause of action and/or for having been filed in an improper venue for post-conviction relief. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff Jesse Mormon was convicted of possession with intent to distribute marijuana in 1996 in the 22nd Judicial District Court. His ten-year-sentence was vacated and he was re-sentenced as a habitual offender to twenty years in prison. On January 28, 2010 Mr. Mormon filed the instant action in the 19th Judicial District Court, based, in part, on the U.S. Civil Rights Act (42 U.S.C.A. § 1981, et seq.), contending that the 22nd Judicial District Court criminal proceeding was illegally tainted by: ineffective assistance of counsel, the criminal court's refusal to require disclosure of the identity of a confidential informant, the discriminatory exclusion of African-Americans from the jury, the failure of the criminal court to dismiss a prospective juror who was the trial judge's insurance agent, and the failure of the criminal court to dismiss a prospective juror who was Caucasian and allegedly "against mixed marriages" when Mr. Mormon, who is African-American, was married to a Caucasian woman. In his 19th Judicial District Court civil suit, Mr. Mormon sought: to have his criminal conviction overturned, release from prison "for time served," and damages in the amount of \$7.4 million.

Upon receipt by the 19th Judicial District Court of Mr. Mormon's pleadings, the civil suit was referred to a district court commissioner for

screening.¹ The commissioner recommended dismissal of the action because the claims raised by Mr. Mormon applied to the conduct of the 22nd Judicial District Court criminal proceeding and were matters properly raised in an appeal or by application for post-conviction relief in, or courts having supervisory jurisdiction over, the 22nd Judicial District Court. The commissioner reasoned that any relief on the bases asserted by Mr. Mormon could only be considered after the original criminal conviction was overturned, and therefore recommended dismissal based on failure to state a cause of action and/or improper venue for post-conviction relief. The district court judge agreed with the commissioner's recommendation and dismissed the action, without prejudice. Mr. Mormon has appealed the dismissal.

LAW AND ANALYSIS

On appeal, Mr. Mormon first asserts that the dismissal of his action was improper because no rebuttal was submitted by the defendants/respondents. However, under the procedure dictated by the applicable law, the district court was authorized to review the suit before serving the defendants.

Louisiana Revised Statute 15:1188 of the Prison Litigation Reform Act ("PLRA")² requires a court to review, before service on the defendant(s), a petition in a civil action in which a prisoner seeks redress

¹ The office of the commissioner for the 19th Judicial District Court was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. **Rochon v. Administrative Remedy Procedure**, 2005-0452, p. 2 n.1 (La. App. 1 Cir. 3/24/06), 934 So.2d 67, 68 n.1, writ denied, 2006-1383 (La. 1/26/07), 948 So.2d 162.

² The PLRA generally applies to a "[c]ivil action with respect to prison conditions," which is defined as a civil proceeding "with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison." LSA-R.S. 15:1181(2). Notwithstanding, LSA-R.S. 15:1191 provides: "Except as specifically prohibited by federal law, the provisions of this Part shall also apply to all prisoner suits in state courts asserting claims arising under 42 U.S.C. 1983 or other federal laws."

from a governmental entity or officer or employee of a governmental entity to identify cognizable claims. The court is authorized to dismiss the petition, in whole or in part, if it "is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted." LSA-R.S. 15:1188(A).³ In addition, LSA-R.S. 15:1184(B) provides:

The court, on its own motion or on the motion of a party, shall dismiss any prisoner suit if the court is satisfied that the action is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted. If the court makes a determination to dismiss the suit based on the content, or lack thereof, of the petition, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies. The court, on its own motion, may raise an exception of improper venue and transfer the suit to a court of proper venue or dismiss the suit.

In the instant case, in recommending dismissal of Mr. Mormon's suit, the district court commissioner gave the following reasons:

After review, it is clear that the Petitioner is presently serving the 20 year sentence, and this suit for damages is predicated on his successfully overturning his conviction and sentence, which he apparently seeks to have this Court order. In other words, in this suit, the Petitioner is actually contesting the validity of his original conviction and seeking to have that overturned based on what appears to be ineffective assistance of counsel and discrimination in the prosecution and selection of the jury by the District Attorney.

This Court has no jurisdiction over this claim because according to the petition, the Petitioner was not convicted in East Baton Rouge parish, but in the 22nd Judicial District Court in Covington, Louisiana. Art. 924 of the C.Cr.P. mandates all post conviction complaints contesting the validity of a conviction be filed in the parish of conviction. Further, any action for wrongful conviction must first be predicated on the

³ Louisiana Revised Statute 15:1188(A) provides, in pertinent part:

The court shall review, before docketing if feasible or, in any event, before service on the defendants, a petition in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. On review, the court shall identify cognizable claims or dismiss the petition, or any portion of the petition, if the petition is frivolous, is malicious, fails to state a cause of action, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted.

reversal of the conviction by the proper court – which is not the 19th Judicial District Court in this instance.

This Court does not sit as the appellate court of decisions and actions by other district courts of this state. Nor does it have original jurisdiction over delictual or civil rights actions that allegedly arose in another Parish. The Petitioner's remedy is either by direct appeal, writs or post conviction relief – all required to be filed in the courts having jurisdiction in or over the 22nd Judicial District. This Court simply has no jurisdiction to overturn the Petitioner's out-of-parish conviction or to make any findings with regard to the monetary claims made herein

(Footnote omitted.)

We agree. The Supreme Court made it clear in **Heck v. Humphrey**, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), that “the . . . principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to the [42 U.S.C.A.] § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement . . . [; and such a] complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” **Heck v. Humphrey**, 512 U.S. at 486-87, 114 S.Ct. at 2372. See also **El-Mumit v. Fogg**, 542 So.2d 149, 150-51 (La. App. 1 Cir. 1989).

Mr. Mormon further asserts, on appeal, that the district court's ruling was in error because (1) “the filing was never a post-conviction,” and (2) the court “had no jurisdiction over the motion, but yet, they ruled on it.” As to the latter, we find no merit in the assertion; it is the duty of a court to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. **McGehee v. City/Parish of East Baton Rouge**, 2000-1058, p. 3 (La. App. 1 Cir. 9/12/01), 809 So.2d 258, 260. In this case, the district court did not rule on the merits of Mr. Mormon's “motion;”

rather, it ruled that, under the governing laws, the 19th Judicial District Court was not authorized to hear the claims asserted by the plaintiff.

Mr. Mormon's remaining contention,⁴ i.e., that "the filing was never a post-conviction," is likewise without merit. It is well-settled in the jurisprudence of this state that a pleading is governed by its substance rather than its caption; pleadings should be construed for what they really are, not for what they are erroneously designated. **Belser v. St. Paul Fire & Marine Insurance Company**, 542 So.2d 163, 165-66 (La. App. 1 Cir. 1989). See also **Union Service & Maintenance Co. v. Powell**, 393 So.2d 94, 96 (La. 1980); **State ex rel. Lay v. Cain**, 96-1247, p. 3 (La. App. 1 Cir. 2/14/97), 691 So.2d 135, 137 (stating, "In all fairness to the trial court, we realize that analyzing pro se pleadings is sometimes as easy as catching a greased snake with your bare hands. We are also aware that a pleading's nature is determined by its substance and not its caption."); **Draten v. Winn Dixie of Louisiana, Inc.**, 94-0767 (La. App. 1 Cir. 3/3/95), 652 So.2d 675, 676; **Bryant v. Middlebrooks**, 486 So.2d 188, 190 (La. App. 1 Cir. 1986).

To initiate this litigation, Mr. Mormon filed a document entitled "Motion for Supervisory Negligence," which enumerated acts of racial discrimination that were allegedly committed during the 22nd Judicial District Court criminal proceeding, resulting in his conviction and

⁴ Although not assigned as error or addressed in his appellate brief, we note that Mr. Mormon made two additional claims in the district court: (1) that LSA-R.S. 15:572.8 provides a basis for jurisdiction in the district court; and (2) that he is entitled to the appointment of counsel to represent him with respect to his claims. Neither of these contentions has merit. Louisiana Revised Statute 15:572.8 provides a cause of action for compensation for a person convicted of a crime, who has served at least part of his sentence, but who is proven to be "factually innocent" of the crime, *and* whose conviction has been "reversed or vacated." Therefore, Mr. Mormon is not entitled to bring suit based on this statute, since his conviction has not been "reversed or vacated" and he has not proven that he is "factually innocent." With respect to Mr. Mormon's claim for appointment of counsel, there is no Constitutional requirement that states provide an indigent prisoner counsel to pursue post-conviction remedies. See **Pennsylvania v. Finley**, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987); **United States v. MacCollom**, 426 U.S. 317, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976); **Ross v. Moffitt**, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974).

incarceration. Mr. Mormon alleged that he had suffered personal injuries as a result of these actions and asked the court to award him \$7.4 million in compensatory and exemplary damages. Authorities cited in his motion included: "Title VII §1981, Discrimination Law;" the "6th Amendment;" the "14th Amendment;" and the Civil Rights Act. Mr. Mormon also filed a document entitled "Motion in Support of Certificate of Appealability," in which he outlined additional assertions of impropriety connected with his criminal conviction and concluded with the following statement: "Petitioner prays this Honorable Court will rule according to the law on constitutional violations, grant Petitioner's motion, vacated [sic] and set aside said conviction, and release Petitioner with credit for time served." Thus, Mr. Mormon, by means of the pleadings filed in this suit, has asked the district court to compensate him for a violation of his civil rights, reverse his criminal conviction, and release him from prison.

Regardless of what Mr. Mormon has denominated the pleadings in which this relief was sought, the court must evaluate his right to pursue the relief request vis-à-vis the court's jurisdiction and the applicable laws. As to Mr. Mormon's claim for damages, as pointed out hereinabove, he is only entitled to sue for damages after his conviction has been reversed. In order to have a criminal conviction reversed, a person convicted of a crime may, in state court, either appeal the conviction, in accordance with LSA-C.Cr.P. art. 911, et seq., apply for a writ of habeas corpus, as set forth in LSA-C.Cr.P. art. 351, et seq., or apply for post-conviction relief,⁵ pursuant to LSA-C.Cr.P. art. 924, et seq. An appeal or an application for post-conviction relief must be filed in the judicial district court where the conviction was

⁵ An "application for post conviction relief" means a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside. LSA-C.Cr.P. art. 924.

obtained. See LSA-C.Cr.P. arts. 914 and 925. An application for a writ of habeas corpus must be instituted in the parish where the person is incarcerated. See LSA-C.Cr.P. art. 352. Mr. Mormon was not convicted nor is he incarcerated in East Baton Rouge Parish; therefore, the 19th Judicial District Court, having jurisdiction only over East Baton Rouge Parish, is not an appropriate court for Mr. Mormon to have his conviction overturned.

Accordingly, we conclude the district court did not err in dismissing Mr. Mormon's suit.

CONCLUSION

For the reasons assigned herein, the judgment of the district court, dismissing the suit of Jesse L. Mormon, is affirmed. All costs of this appeal are to be borne by the plaintiff/appellant, Jesse L. Mormon.

AFFIRMED.