

RENDERED: FEBRUARY 3, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000854-MR

WILLIAM A. SHECKLES, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 05-CI-000020

SHELLY S. GIBSON; DAVID R. STENGEL;
AND THE COMMONWEALTH ATTORNEYS' OFFICE
FOR THE 30TH JUDICIAL DISTRICT OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND McANULTY, JUDGES; MILLER, SENIOR JUDGE.¹

MILLER, SENIOR JUDGE: William A. Sheckles (Sheckles), *pro se*, brings this appeal from an opinion and order of the Jefferson Circuit Court, entered March 31, 2005, summarily dismissing his complaint brought pursuant to federal and state constitutions, statutes, and court rules on the basis of appellees' absolute immunity. We affirm.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The background in this case is succinctly set forth in the trial court's opinion:

In case No. 00-CR-1890, Sheckles pled guilty on June 30, 2002 and received a seventeen year sentence, which he is currently serving. Gibson was the Assistant Commonwealth Attorney in the case. On January 4, 2005, Sheckles filed this civil suit for damages against Defendants, alleging that Gibson willfully or negligently failed to produce discovery pursuant to a pretrial order in the criminal matter that the prosecution's witness, Tara Love - Sheckles' domestic partner and the accuser, wanted the charges against him dropped. Sheckles alleges that he would not have pled guilty had he been provided with such information.

This case was removed by Defendants to federal court on January 25, 2005. On February 22, 2005, the federal court dismissed Sheckles' federal claims² and

² In dismissing Sheckles' federal claims, without prejudice, as not ripe for federal review under the doctrine set forth in Heck v. Humphrey, *infra*, because the allegations challenge the validity of his underlying conviction, the court stated: "The Civil Rights Act of 1871, codified as 42 U.S.C. § 1983, provides a federal forum to redress the claims of individuals who have suffered injury at the hands of government officials acting in violation of federal law. Heck v. Humphrey, 512 U.S. 477, 480 (1994); West v. Atkins, 487 U.S. 42, 48 (1988). Plaintiff alleges Defendants' conduct invalidates the lawfulness of his guilty plea. If the Court were to allow Plaintiff to proceed in an action for damages against the named Defendants, and should he ultimately prevail, the result in this case would necessarily imply the invalidity of the state court conviction.

Section 1983 actions 'are not appropriate vehicles for challenging the validity of outstanding criminal judgments . . . that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement.' Id. at 486. To recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by action whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus. Id. Until such time, a cause of action under § 1983 for damages is not cognizable. Id.

Plaintiff has not alleged, much less established, that his underlying conviction or sentence has been reversed on direct appeal, expunged, declared invalid, or otherwise called into question, as required by Heck. Until he can do so, a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, provides

remanded any remaining state law claims back to this Court. On March 11, 2005, Defendants filed a motion to dismiss based upon their argument of absolute immunity. Sheckles filed a response to their motion on March 16, 2005.

The trial court thereafter dismissed the complaint on grounds of appellees' absolute immunity. Citing Jefferson County Commonwealth Attorney's Office v. Kaplan, 65 S.W.3d 916 (Ky. 2001), the trial court stated:

(T)he Court finds that Defendants are entitled to absolute immunity from civil liability for any failure to provide discoverable materials pursuant to a pretrial order in the criminal case against Sheckles, as any such failure occurred beyond the investigation phase when Gibson was functioning as a state advocate.

This appeal followed.

When reviewing the trial court's dismissal of a complaint under Kentucky Rules of Civil Procedure (CR) 12.02(f) for failure to state a claim, an appellate court's standard of review is as follows:

The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. [] In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged

the exclusive federal court remedy for the alleged constitutional violations. See Edwards v. Balisok, 520 U.S. 641, 646, 648 (1997); Heck, 512 U.S. at 486-87."

in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883-84 (Ky.App. 2002) (internal quotation omitted).

Sheckles' complaint alleged that appellees willfully or negligently withheld or failed to provide Sheckles or his attorney with exculpatory material consisting of the victim's requests to appellees to drop the charges and to the family court to dismiss a domestic violence order between the two. Under the standard of review as stated in James, *supra*, assuming these facts can be proved, we conclude that the trial court correctly found that Sheckles was not entitled to relief.

As stated in Kaplan, *supra* at 920,

In the amended third-party complaint, Kaplan alleges that Haynie and Dyke failed to disclose exculpatory evidence as required by the trial court's pre-trial order, which failure compromised Kaplan's ability to effectively represent Puckett at his first trial. These allegations occurred beyond the investigation phase of the case. Rather, the alleged failure to disclose evidence occurred at a point in time when the prosecutors were acting as advocates. Thus, we hold that the prosecutors are entitled to absolute immunity. See Buckley v. Fitzsimmons, 509 U.S. 259, 273-74, 113 S.Ct. 2606, 2616, 125 L.Ed.2d 209, 226 (1993).

Our holding reflects the policy decision made by this Court in McCollum v. Garrett, Ky., 880 S.W.2d 530 (1994), in which we drew a distinction between a prosecutor's role as investigator and his or her role as an advocate for the Commonwealth:

During the time in which [the prosecutor] essentially acted as an investigator, the protection available to him was qualified immunity. Upon the commencement of prosecution and the assumption of his role of prosecutor, [the prosecutor's] immunity became absolute. Id. at 535.

In a case involving facts similar to those in the case at bar, the U.S. Supreme Court articulated why it made the same policy choice as we made in McCollum and reaffirm today:

[S]uits that survived the pleadings would pose substantial danger of liability even to the honest prosecutor. The prosecutor's possible knowledge of a witness' falsehoods, *the materiality of evidence not revealed to the defense*, the propriety of a closing argument, and- ultimately in every case- the likelihood that prosecutorial misconduct so infected a trial as to deny due process, are typical of issues with which judges struggle in actions for post-trial relief, sometimes to differing conclusions. The presentation of such issues in a § 1983 [civil] action often would require a virtual retrial of the criminal offense in a new forum It is fair to say, we think, that the honest prosecutor would face greater difficulty in meeting the standards of qualified immunity than other executive or administrative officials. Frequently acting under serious constraints of time and even information, a prosecutor inevitably makes many decisions that could engender colorable claims of constitutional deprivation. Defending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials. Imbler v. Pachtman, 424 U.S. 409, 425-26, 96 S.Ct. 984, 992-93, 47 L.Ed.2d 128, 140-41 (1976) (emphasis added).

Based on the above, the court in Kaplan at 921 held that the trial court correctly dismissed the complaint against the prosecutors because "(a)bsolute immunity means 'a complete exemption from civil liability'" *Black's Law Dictionary*, 753 (7th ed. 1999)." Following from Kaplan, because appellees herein had no legal liability to Sheckles, he could not prevail on his complaint, and the trial court correctly dismissed the complaint against them.³

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William A. Sheckles, Jr.,
pro se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

James M. Herrick
Assistant Attorney General
Frankfort, Kentucky

³ We note that, despite Sheckles' contentions, he could not have been unaware of the victim's request to the family court to dismiss the domestic violence order between the two, given that her motion was served on Sheckles by hand delivery eighteen months before he pleaded guilty, as indicated on the motion attached as an exhibit to his complaint.