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Azubuko v. MA State Pol

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-2749

CHUKWUMA E. AZUBUKO,
Appellant

vs.

MASSACHUSETTS' STATE POLICE

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 04-4176)
District Judge: Honorable R. Barclay Surrick

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
September 23, 2005
Before: SCIRICA, Chief Judge, WEIS and GARTH, Circuit Judges

Filed October 28, 2005

OPINION

PER CURIAM.

Chukwuma E. Azubuko appeals the District Court's denial of his request for a hearing by a three-judge panel of the district court. Because he sets forth no legal

basis for such a hearing, we will dismiss his appeal as legally frivolous.

On September 2, 2004, Azubuko filed a Motion to Proceed *In Forma Pauperis* in the United States District Court for the Eastern District of Pennsylvania. In a written opinion filed on November 11, the District Court denied Azubuko's request to proceed *in forma pauperis*, and went on to observe that even if the motion had been granted, Azubuko's Complaint alleging civil rights violations by the Massachusetts State Police would nonetheless be dismissed for failure to state a claim upon which relief could be granted, lack of personal jurisdiction, and/or improper venue.¹ Azubuko filed a motion for reconsideration on December 1, 2004, which the Court denied on April 1, 2005. This was followed by a motion for a hearing by a three-judge court, filed on April 11, which was denied on May 12. On May 26, Azubuko timely filed a Notice of Appeal from the District Court's May 12 Order.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. Because Azubuko has been granted *in forma pauperis* status pursuant to 28 U.S.C. § 1915, we must first review this appeal for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B). An appeal may be dismissed as frivolous if it has no arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). Azubuko appeals the District Court's denial of his request for a hearing by a

¹ The Court also noted that Azubuko has filed numerous frivolous complaints in various state and federal courts over the past ten years, despite a warning from the Second Circuit in 2000 that future frivolous filings could result in sanctions.

three-judge panel of the District Court. In his motion, Azubuko cites no authority providing a basis for a hearing by a three-judge panel under the circumstances present in his case, and we are aware of none. As there is no legal basis for such a hearing, his appeal lacks an arguable basis in law, and accordingly, it will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).