

No. 05-04-14972

THE STATE OF TEXAS

IN THE DISTRICT COURT
OF GAINES COUNTY, TEXAS

VS.

106TH JUDICIAL DISTRICT

ROQUE TERCERO ARANDA

**ORDER FINDING ROQUE TERCERO ARANDA A VEXATIOUS LITIGANT
AND ORDER PROHIBITING HIM FROM FILING NEW LITIGATION**

On the 17th day of July, 2005 came to be heard the motion of Sammy McCrary, Assistant District Attorney, to have Roque Tercero Aranda declared to be a vexation litigant. After receiving evidence and hearing the arguments of counsel, this Court renders the following findings of fact and conclusions of law and enters the following orders:

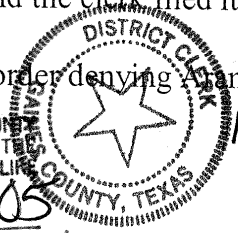
FINDINGS OF FACT & CONCLUSIONS OF LAW

Roque Tercero Aranda currently has two lawsuits pending naming District Attorney Ricky B. Smith as a defendant, Cause Number 05-03-14928 before the 106th Judicial District Court of Gaines County, Texas and Cause Number GN502274 before the 261st Judicial District Court of Travis County, Texas.

In Cause Number 05-03-14928, Aranda brought suit against numerous defendants, including Ricky B. Smith, the Eleventh Court of Appeals, and the Court of Criminal Appeals, for their involvement in the denial of his request for appointment of counsel and post conviction DNA testing under *Chapter 64 of the Texas Code of Criminal Procedure*. Aranda signed his request for appointment of counsel and post conviction DNA testing on September 1, 2003 and the clerk filed it on September 8, 2003. The trial court

subsequently signed an order denying Aranda's motion on September 22, 2003. In Cause

STATE OF TEXAS
COUNTY OF GAINES
I, VIRGINIA STEWART DISTRICT CLERK, IN AND FOR THE COUNTY OF GAINES, TEXAS, DO HEREBY CERTIFY THAT THE INSTRUMENT ABOVE NAMED DO HEREBY CERTIFY THAT THE INSTRUMENT IS TRUE AND CORRECT COPY OF THE INSTRUMENT NOW ON FILE, IN MY OFFICE.



Filed for Record
18th Day of July A.D. 2005 at 10:35 o'clock P.M.
Virginia Stewart District Clerk
Gaines County, Texas

18th DAY OF July 2005
Virginia Stewart

Virginia Stewart

Number 05-03-14928, Aranda alleges that the trial court had a mandatory duty to appoint counsel. Up until September 1, 2003, Aranda would have been correct. However, effective September 1, 2003, *Tex. Code Crim. Proc. Art. 64.01* provides, “A convicted person is entitled to counsel during a proceeding under this chapter. The convicting court shall appoint counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, *the court finds reasonable grounds for a motion to be filed*, and the court determines that the person is indigent.” (*emphasis added*). The trial court correctly found that Aranda’s motion was without merit due to the previous DNA testing in the case and properly denied his motion. *Tex. Code Crim. Proc. Art. 64.05* provides the correct procedures for appeal of the trial court’s decision. Aranda is apparently unhappy with the outcome of those procedures because he has also named both the Eleventh Court of Appeals and the Court of Criminal Appeals as party defendants to his lawsuit. However, Aranda’s dissatisfaction cannot justify the filing of this civil suit against the trial judge, appellate judges and the prosecuting attorney who certainly have absolute immunity for their judicial and prosecutorial functions regarding *Chapter 64 of the Texas Code of Criminal Procedure*. See Imbler v. Pachtman, 424 U.S. 409 (1976) and Stump v. Sparkman, 435 U.S. 349 (1978). Therefore, this court finds that there is not a reasonable probability that Roque Tercero Aranda will prevail in this litigation against defendant Ricky B. Smith.

In Cause Number GN502274, Aranda brought suit against numerous defendants, including Ricky B. Smith and the Texas Board of Pardons and Paroles, for conspiring to deny his parole. Again, these defendants are protected by absolute immunity for the actions Aranda alleges as the basis of his lawsuit. See Johnson v. Kegans, 870 F.2d 992

(5th Cir., 1989) and Pinaud v. County of Suffolk, 52 F.3d 1139 (2d Cir., 1995). For this reason, this court finds that there is not a reasonable probability that Roque Tercero Aranda will prevail in this litigation against defendant Ricky B. Smith.

Furthermore, these are not the first frivolous lawsuits filed by Mr. Aranda. On May 20, 2004, in both Civil Action No. 5:04-CV-104C and Civil Action No. 5:04-CV-105C before the United States District Court for the Northern District of Texas Lubbock Division, Judge Cummings stated, "Plaintiff acknowledges that he has raised the same claims in a prior civil rights action; therefore, the filing of the instant lawsuit is malicious." He found that Aranda's civil rights complaints and all claims alleged in these two cases should be dismissed with prejudice. He also held that additional sanctions should be imposed against Aranda for his utter disregard for prior orders barring him from filing any new civil actions in the United States District Courts or any actions that might be removed to federal court. In each case, Judge Cummings clearly stated, "Plaintiff is an abusive, vexatious, and harassing litigant who continues to file frivolous lawsuits." He noted that Aranda had at least 14 strikes against him pursuant to *28 U.S.C. §1915*. Notably *28 U.S.C. §1915* provides in part, "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." A list of Roque Aranda's frivolous lawsuits was included as a part of the Court's orders in each case.

In Aranda v. Prasifka, 71 Fed. Appx. 357, 357-358 (5th Cir. 2003), the Fifth Circuit stated, “The district court did not abuse its discretion in dismissing the suit for failure to comply with the sanction order. Balawajder v. Scott, 160 F.3d 1066, 1068 (5th Cir. 1998).” The Court then held, “This appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.” The Court also noted, “Aranda is subject to the three-strikes bar of 28 U.S.C. § 1915(g). See Aranda v. Simpson, 263 F.3d 163 (2001) (unpublished). While this appeal was pending, this court warned Aranda that the filing of frivolous pleadings would invite the imposition of sanctions. See Aranda v. Texas Bd. of Pardons and Parole, No. 03-40202, at 2 (5th Cir. May 6, 2003) (unpublished).”

In Aranda v. California, 2003 U.S. Dist. LEXIS 8773, 1-2 (D. Tex., 2003), the Court stated, “Petitioner has a long history of filing frivolous lawsuits in federal court. More particularly, petitioner has filed at least 27 different civil rights actions and habeas cases in the last four years. See Aranda v. Milsaps, No. 5-00-CV-0386-C, op. at 4-14 (N.D. Tex. Mar. 29, 2001). This abuse of the judicial system prompted one judge in this district to bar petitioner ‘from filing any habeas petitions challenging his conviction or detention without permission from a United States District Judge or a Circuit Judge of the Fifth Circuit and any request to file a habeas petition must be accompanied by proof of exhaustion of state remedies.’ Aranda v. Cockrell, No. 5-01-MC-049-C (N.D. Tex. Oct. 12, 2001).”

In Tercero-Aranda v. Cockrell, 2002 U.S. Dist. LEXIS 7521 (D. Tex., 2002) the Court wrote, “Petitioner is reminded of the existing orders entered by this Court barring

him from filing new civil complaints or habeas petitions and other pleadings, exhibits, correspondence or other pleadings. Petitioner is also reminded of other orders imposing sanctions and barring him from new filings entered by United States District Courts located in the Fifth Circuit and the United States Court of Appeals for the Fifth Circuit, because of his frivolous and malicious filings.” In entering its order, the Court also noted, “As of April 23, 2002, Petitioner has filed at least 48 civil rights and habeas actions in the United States District Courts located in the Fifth Circuit and he has also filed at least 22 appeals in the United States Court of Appeals for the Fifth Circuit.”

In the cases of Aranda v. United States Gov't, 2001 U.S. Dist. LEXIS 16824, 2-3 (D. Tex. 2001) and Aranda v. Key, 2001 U.S. Dist. LEXIS 16854 (D. Tex. 2001), the Court wrote:

The undersigned takes judicial notice of the Order entered March 29, 2001, in Civil Action No. 5:00-CV-0386-C which sets forth plaintiff's litigation history known to the Court as of that date and contains a finding that he is an abusive litigant who has repeatedly engaged in recreational litigation. Further, since the March 29, 2001, Order, plaintiff's civil rights case in cause no. 5:00-CV-0379-C was dismissed as malicious; his civil rights case in cause no. 5:00-CV-0409-C was dismissed as frivolous and malicious; and his habeas petitions in cause no. 5:00-CV-0408-C and in cause no. 5:01-CV-0134-C were dismissed for failure to exhaust state court remedies. The Court has reviewed plaintiff's claims and finds they are totally frivolous. Plaintiff is resuming his previous course of abusive conduct by continuing to file frivolous, repetitious and malicious complaints, consuming inordinate amounts of scarce judicial resources while other litigants wait for their day in court.

In each case the Court then stated, “IT IS THEREFORE ORDERED and DECREED that the civil rights complaint filed by plaintiff **ROQUE T. ARANDA** is in all things DENIED and is hereby ORDERED DISMISSED WITH PREJUDICE AS FRIVOLOUS.”

Since his conviction for burglary of a habitation, in cause number 97-2887, in the 106th Judicial District Court of Gaines County, Texas on October 7, 1997, Roque Tercero Aranda has engaged in a course of frivolous and malicious litigation against public officials of both the State of Texas and the United States. Various federal courts have entered orders declaring Aranda's lawsuits to be frivolous. He has been found to be an abusive litigant on more than one occasion and repeatedly ordered to desist in his "recreational" litigation. Undeterred, he continues to engage in these tactics of harassment. Pursuant to *Tex. Civ. Prac. & Rem. Code § 11.101* & *Tex. Civ. Prac. & Rem. Code § 11.054*, this court finds that Roque Tercero Aranda is a vexatious litigant.

ORDER

Pursuant to *Tex. Civ. Prac. & Rem. Code §11.101*, it is hereby ordered that Roque Tercero Aranda is prohibited from filing, in propria persona, any new litigation in a court in this state unless he first receives permission of the local administrative judge as provided in *Tex. Civ. Prac. & Rem. Code §11.102*. No clerk of any court of this state may file a litigation presented by Roque Tercero Aranda unless he has obtained an order from the local administrative judge permitting the filing. If the clerk mistakenly files a litigation without an order from the local administrative judge, any party may file with the clerk and serve on Roque Tercero Aranda and the other parties to the suit a notice stating that Roque Tercero Aranda is a vexatious litigant subject to a pre-filing order under *Tex. Civ. Prac. & Rem. Code §11.101*. On the filing of the notice, the court shall immediately stay the litigation and shall dismiss the litigation unless Roque Tercero Aranda, not later than the 10th day after the date the notice is filed, obtains an order from the local administrative judge under *Tex. Civ. Prac. & Rem. Code §11.102* permitting the filing of

the litigation. It is further ordered that the District Clerk of the 106th Judicial District Court of Gaines County, Texas shall forward a certified copy of this order to the Office of Court Administration of the Texas Judicial System.

SIGNED this the 18 day of July, 2005.

Joseph Conally
Judge Presiding