United States Court of Appeals

For the First Circuit

No. 07-1195

MICHAEL G. KESELICA,

Plaintiff, Appellant,

v.

DONALD L. CARCIERI, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

[Hon. William E. Smith, U.S. District Judge]

Before

Boudin, Chief Judge,
Torruella and Lipez, Circuit Judges.

Michael G. Keselica on brief pro se.

September 7, 2007

Per Curiam. Michael G. Keselica appeals the district court's sua sponte dismissal of his civil rights complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Having carefully reviewed the record and appellant's submissions on appeal, we conclude that the district court correctly determined that Keselica's claims challenged the legality of his confinement and therefore were not cognizable under 42 U.S.C. § 1983. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005); Preiser v. Rodriquez, 411 U.S. 475, 489-90 (1973) (challenge to fact or duration of confinement must be through habeas corpus). Dismissal of the complaint was proper for the reasons set forth in the magistrate judge's December 4, 2006, Report and Recommendation, subsequently adopted by the district court.

To the extent Keselica challenges the district court's denial of leave to amend the complaint, no error is apparent because the proposed amendments, which would have added claims against Virginia officials and a demand for monetary damages, would not have cured the deficiencies in the complaint. See Universal Comm. Sys., Inc. v. Lycos, Inc., 478 F.3d 413, 418 (1st Cir. 2007); Aponte-Torres v. University of Puerto Rico, 445 F.3d 50, 58 (1st Cir. 2006). Further, contrary to Keselica's contention, appellees' failure to file a brief on appeal does not amount to a waiver of objections to Keselica's arguments. See Fed. R. App. P. 31(c).

The judgment of the district court is <u>affirmed</u>. <u>See</u> 1st Cir. Loc. R. 27.0(c). Keselica's "Application for Order Revoking or Suspending Governor Donald Carcieri's Rendition Warrant" is <u>denied</u>.