

Not for Publication in West's Federal Reporter
United States Court of Appeals
For the First Circuit

No. 07-1368

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. Mary M. Lisi, U.S. District Judge]

Before

Boudin, Chief Judge,
Selya, Senior Circuit Judge,
and Lipez, Circuit Judge.

Michael G. Keselica on brief pro se
Mark R. Davis, Senior Assistant Attorney General, William F. Thro, State Solicitor General, and Robert F. McDonnell, Attorney General, on brief for appellee Timothy M. Kaine.

November 7, 2007

Per Curiam. Michael G. Keselica appeals from the district court's sua sponte dismissal, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), of a civil rights complaint filed approximately one month after the sua sponte dismissal of a substantially similar complaint that Keselica had filed in the same court. In both instances, the district court concluded that Keselica's claims necessarily called into question the legality of his confinement and, therefore, were not cognizable under 42 U.S.C. §§ 1983 or 1985. We summarily affirmed the first dismissal, see Keselica v. Carcieri, No. 07-1195 (1st Cir. Sept. 4, 2007) (per curiam), and the same disposition is appropriate here.

Dismissal of the complaint was proper for the reasons set forth in the magistrate judge's January 30, 2007, report and recommendation, subsequently adopted by the district court.¹ See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005); see also Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973) (challenge to fact or duration of confinement must be through habeas corpus).

The judgment of the district court is summarily affirmed. See 1st Cir. R. 27.0(c).

¹That decision was in accord with applicable Supreme Court precedent.