Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00719-CV

Juan **ENRIQUEZ**,
Appellant

v.

Dwayne **VILLANUEVA**, Karnes County Sheriff, Individually and in his Official Capacity,
Appellee

From the 81st Judicial District Court, Karnes County, Texas
Trial Court No. 17-09-00210-CVK
Honorable Russell Wilson, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 29, 2018

AFFIRMED

In this inmate litigation, Appellant complains that venue was not proper in Karnes County. He appeals the order granting Appellee's plea to the jurisdiction, based on qualified and official immunity, and dismissing Appellant's claims as frivolous. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002, .003, .006 (West 2017). We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Juan Enriquez is an inmate confined by the Texas Department of Criminal Justice—Institutional Division at the Terrell Unit in Brazoria County, Texas. At the time he filed

suit, Enriquez was serving a life sentence for murder. At all times during the pendency of this lawsuit and this appeal, Enriquez appeared pro se. He sued Appellee Dwayne Villanueva, individually and in his official capacity as the Sheriff of Karnes County, Texas.

In his original petition against Sheriff Villanueva, Enriquez alleges that in 1966, he was convicted in Karnes County of capital murder and was subsequently placed in prison on a death warrant to await execution. Enriquez's sentence was later commuted by the governor to a life sentence. In 2016, Enriquez filed in Karnes County a petition for writ of habeas corpus.

In January 2017, the trial court appointed counsel for Enriquez, set the habeas proceeding for a hearing, and issued a bench warrant compelling Enriquez's presence at the hearing. The bench warrant directed Sheriff Villanueva as follows:

> "[Y]ou, the said DWAYNE VILLANUEVA, Sheriff of KARNES County, Texas are hereby directed to call upon the proper authorities of the TEXAS DEPARTMENT CRIMINAL JUSTICE, for permission to take the body of said JUAN ENRIQUEZ and to safely convey him to the County Jail of KARNES County, Texas in KARNES CITY, Texas, to answer the State of Texas as a Defendant, and that you safely keep him in said jail until further orders of this Court are made and entered.

Sheriff Villanueva executed the bench warrant and retrieved Enriquez from the Terrell Unit, but not before agreeing with the Terrell Unit warden to return Enriquez to the "TDCJ after completing the demands of the Bench Warrant/Federal Writ Court Order."

The trial court continued the January hearing and Enriquez was transferred back to the Brazoria County penitentiary pursuant to the agreement between Sheriff Villanueva and the warden.

On May 12, 2017, Enriquez filed a lawsuit in Nueces County seeking damages against Sheriff Villanueva, in his personal and official capacities, on the grounds that Sheriff Villanueva should not have returned him to the penitentiary. Enriquez sued Sheriff Villanueva for false

imprisonment and cruel and unusual punishment pursuant to 42 U.S.C. § 1983 and prayed for actual, exemplary, and nominal damages of over $10 million.

Enriquez also asserted that venue in Nueces County was proper because he was a resident of Nueces County. In later pleadings, Enriquez declared he was born in Nueces County, where he had lived his entire life, and he intended to return to Nueces County when released from prison. At the time Enriquez filed his lawsuit against Sheriff Villanueva, Enriquez was serving his sentence at the Terrell Unit in Brazoria County.

Villanueva filed a timely motion to transfer venue to Karnes County asserting that venue was mandatory in that county under Civil Practice and Remedies Code section 15.015. Subject to the motion to transfer venue, Villanueva also filed a plea to the jurisdiction, a motion to dismiss, and his answer. In his answer, Villanueva asserted the affirmative defenses of qualified and official immunity.

After the venue hearing, the Nueces County trial court agreed that venue was proper in Karnes County, and the case was transferred to Karnes County. In Karnes County, the trial court granted Villanueva's plea to the jurisdiction based on the defenses of qualified and official immunity, and it dismissed Enriquez's claims as frivolous.

This appeal followed.

PRO SE PARTIES

Enriquez appeared pro se before the trial court and is also representing himself before this court. "We construe liberally pro se pleadings and briefs; however, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure." *Washington v. Bank of N.Y.*, 362 S.W.3d 853, 854 (Tex. App.——Dallas 2012, no pet.); *In re N.E.B.*, 251 S.W.3d 211, 211–12 (Tex. App.—Dallas 2008, no pet.) (citing *Mansfield State Bank v. Cohn*, 573 S.W.2d 18.1, 184–85 (Tex. 1978)). "To do [otherwise] would give a pro

se litigant an unfair advantage over a litigant who is represented by counsel." *Shull v. United Parcel Serv.*, 4 S.W.3d 46, 53 (Tex. App.—San Antonio 1999, pet. denied).

VENUE

In his first issue, Enriquez argues that Nueces County is a proper venue for his suit against Sheriff Villanueva because Enriquez resides in that county or intends to reside in that county when he is released from the State penitentiary.

Villanueva argues that, because the mandatory venue provision under section 15.015 applies and he was sued in his official capacity, Karnes County is the proper venue.

A. Standard of Review

Our review of an order granting a motion to transfer venue is de novo and governed by section 15.064(b) of the Texas Civil Practice and Remedies Code, which provides as follows:

> On appeal from the trial on the merits, if venue was improper it shall in no event be harmless error and shall be reversible error. In determining whether venue was or was not proper, the appellate court shall consider the entire record, including the trial on the merits.

TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b); *see Wilson v. Tex. Parks & Wildlife Dep't*, 886 S.W.2d 259, 261 (Tex. 1994) (appellate courts conduct an independent review of the entire record to determine if there is any probative evidence that supports the trial court's decision); *In re A.D.P.*, 281 S.W.3d 541, 545 (Tex. App.—El Paso 2008, no pet.).

"If there is any probative evidence in the entire record that venue was proper, we must uphold the trial court's determination on the matter of venue." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 471 (Tex. 1995) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b); *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758 (Tex. 1993)).

B. Applicable Law

When a lawsuit is filed, the plaintiff is generally afforded the first right to choose venue.

> Venue selection presupposes that the parties to the lawsuit have choices and preferences about where their case will be tried. Venue may be proper in many counties under general, mandatory, or permissive venue rules. The plaintiff is given the first choice in the filing of the lawsuit. If the plaintiff's venue choice is not properly challenged through a motion to transfer venue, the propriety of venue is fixed in the county chosen by the plaintiff. If a defendant objects to the plaintiff's venue choice and properly challenges that choice through a motion to transfer venue, the question of proper venue is raised.

Rosales v. H.E. Butt Grocery Co., 905 S.W.2d 745, 747 (Tex. App.—San Antonio 1995, writ denied) (quoting *Wilson*, 886 S.W.2d at 260 (citations and footnotes omitted)). Under the venue statutory scheme, the party who seeks to maintain venue in a particular county bears the burden to prove "that venue is maintainable in the county of suit." TEX. R. CIV. P. 87-2(a); *Wilson*, 886 S.W.2d at 260.

A mandatory venue provision such as section 15.015 mandates venue in a specific county. *Wichita Cty., Tex. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996). When section 15.015 applies, this section takes precedence over other mandatory or permissive venue provisions. *Randall Cty. v. Todd*, 542 S.W.2d 236, 238 (Tex. Civ. App.—Amarillo 1976, no writ).

When a defendant seeks to transfer venue under a mandatory venue provision, that defendant has the burden to prove "that venue is maintainable in the county to which the transfer is sought by virtue of one or more mandatory venue exceptions." TEX. R. CIV. P. 87-2(a); *see In re Masonite Corp.*, 997 S.W.2d 194, 197 (Tex. 1999). "If the plaintiff files suit in an impermissible county, he waives his option of where to file suit and the defendant may have the suit transferred to another county, as long as venue is proper in that other county." *Maranatha Temple, Inc. v. Enter. Prods. Co.*, 833 S.W.2d 736, 741 (Tex. App.—Houston [1st Dist.] 1992, writ denied).

On the other hand, if the plaintiff files suit in a permissible county, a defendant may still request a transfer of venue to a mandatory venue. When the defendant meets the burden of proof that suit is proper under a mandatory venue provision, the trial court must grant the motion. *In re Fisher*, 433 S.W.3d 523, 534 (Tex. 2014) (citing *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996)).

C. Analysis

1. Venue in Nueces County

At the time Enriquez filed his suit in Nueces County against Sheriff Villanueva, Enriquez was housed at the Terrell Unit in Brazoria County.[1]

In his petition, Enriquez only alleged that venue was proper in Nueces County "because Petitioner is a resident of Nueces County." Throughout his petition, however, Enriquez admits being incarcerated in Brazoria County. Indeed, in his response to Sheriff Villanueva's motion to transfer venue, Enriquez declared under penalty of perjury that he denied pleading a cause of action against Karnes County and that he "identified Defendant Villanueva in his official capacity only to comply with the 'under color of law' requirement of 42 U.S.C. [§] 183." Enriquez also declared he resided in Nueces County for his entire life until he was arrested in 1966, and that he intends to live in Nueces County when released from custody.

Considering all the evidence before us, we conclude Enriquez failed to meet his burden of proof that venue was proper in Nueces County under any of the venue statutes. In fact, Enriquez does not cite to any statute, and we encountered none, where the general venue provision requiring him to file the lawsuit against Sheriff Villanueva should be maintained in Nueces County simply

[1] The record indicates that before the hearing on the motion to transfer venue, Enriquez was moved to the Byrd Penitentiary located in Huntsville, Walker County, Texas.

because Enriquez lived in that county before being incarcerated in 1966 or because he intended to reside in that county when he was released from prison.

Any complaint Enriquez raised against Sheriff Villanueva, whether valid or not, did not accrue in Nueces County. The facts recited in Enriquez's petition show that his complaints against Sheriff Villanueva accrued in Karnes County where Sheriff Villanueva first proceeded to transfer Enriquez to the penitentiary after the hearing on his habeas corpus proceeding was continued. For these reasons, we conclude Enriquez did not meet his burden to maintain his lawsuit in Nueces County.

2. Venue in Karnes County

We next turn to whether Villanueva met his burden of proof to maintain venue in Karnes County under the mandatory venue provision of section 15.015. Villanueva filed a motion to transfer venue from Nueces County to Karnes County alleging that section 15.015's mandatory venue provision applied to him because he was sued in his official capacity. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.015 (West 2017) ("An action against a county shall be brought in that county.").

"[A] suit against a public official in his 'official capacity' is, in effect, a suit against the . . . governmental entity the official represents." *Hallmark v. City of Fredericksburg*, 94 S.W.3d 703, 708 (Tex. App.—San Antonio 2002, pet. denied) (citing *Hafer v. Melo*, 502 U.S. 21, 25 (1991)). Accordingly, Enriquez's claims against Sheriff Villanueva in his official capacity are considered claims against the county even though the county is not named in the lawsuit. *See id.*; *Randall Cty.*, 542 S.W.2d at 238 (citing *Cobb v. H.C. Burt & Co.*, 241 S.W. 185, 238 (Tex. Civ. App.—Beaumont 1922, no writ)); *see also Davis v. Comal Cty. Comm'rs Court*, No. 03-11-00414-CV, 2012 WL 2989220, at *1 n.3 (Tex. App.—Austin July 13, 2012, no pet.) (mem. op.); *Ware v. Miller*, 82 S.W.3d 795, 800 (Tex. App.—Amarillo 2002), pet. denied).

The record shows that Sheriff Villanueva is the sheriff of Karnes County and that Enriquez sued him in both his official and individual capacities. Because Sheriff Villanueva was sued in his capacity as a county official, he is entitled to rely upon the mandatory county venue statute. *See Randall Cty.*, 542 S.W.2d at 238. Had Sheriff Villanueva only been sued in his individual capacity, the mandatory venue statute for counties would not apply. *See McIntosh v. Copeland*, 894 S.W.2d 60, 63–64 (Tex. App.—Austin 1995, writ denied). This is so because an action against a county official in his individual capacity is not an action against the county for venue purposes. *Id.* at 63. Under these circumstances, the general venue statute would apply.[2] However, this is not the case. Sheriff Villanueva was originally sued in his official capacity and section 15.015 mandates venue in Karnes County. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.015; *Randall Cty.*, 542 S.W.2d at 238.

Nonetheless, Enriquez seems to argue that section 15.015 does not apply because, on appeal, Enriquez abandoned his claims against Sheriff Villanueva in his official capacity. Enriquez's argument fails because venue is determined "based on the facts existing at the time the cause of action that is the basis of the suit accrued." TEX. CIV. PRAC. & REM. CODE ANN. § 15.006; *Ford Motor Co. v. Johnson*, 473 S.W.3d 925, 930 (Tex. App.—Dallas 2015, pet. denied). A cause of action accrues "when facts have come into existence that authorize a claimant to seek a judicial remedy." *Apex Towing Co. v. Tolin*, 41 S.W.3d 118, 120 (Tex. 2001); *In re Stroud Oil Props., Inc.*, 110 S.W.3d 18, 25 (Tex. App.—Waco 2002, orig. proceeding).

Here, Enriquez's causes of action, if any, accrued when Sheriff Villanueva took the steps to transfer Enriquez back to the penitentiary. This occurred in Karnes County.

[2] The record shows Sheriff Villanueva resides in Karnes County. Under the general venue provision, Karnes County is a county of proper venue. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1)–(2) (West 2017) (venue is proper "in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred [or] in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person").

D. Conclusion

Based on the record, Enriquez did not meet his burden of proof to show why venue was proper in Nueces County. The facts that Enriquez was a resident of Nueces County before he was imprisoned and that he intended to live in Nueces County after being released from prison do not attach venue in Nueces County. On the other hand, Villanueva met his burden of proof to show that Karnes County was the county of proper venue under the mandatory venue provision of section 15.015. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.015. Sheriff Villanueva was sued in his official capacity and, therefore, the suit against him was a suit against the county.

We overrule Enriquez's first issue.

We now turn to Enriquez's next issues. Because issues three and four relating to jurisdiction are dispositive, we will address them before we address Enriquez's second issue.

JURISDICTION

As previously stated, Enriquez brought his suit against Sheriff Villanueva under 42 U.S.C. § 1983. Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

42 U.S.C. § 1983 (2012).

A. Arguments

We understand Enriquez's jurisdictional issues to be that the trial court abused its discretion when it dismissed Enriquez's causes of action under § 1983 for lack of subject matter jurisdiction because, according to Enriquez, he was a detainee at the time and was not serving any sentence.

Conversely, Sheriff Villanueva argues he is entitled to immunity, both in his individual and official capacities, for Enriquez's § 1983 claims for wrongful arrest and cruel and unusual

punishment because Enriquez did not plead sufficient facts to meet his burden of proof to confer jurisdiction on the court.

B. Standard of Review

Immunity from suit may be asserted through a plea to the jurisdiction. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770–71 (Tex. 2018). A jurisdictional plea may challenge the pleadings, the existence of jurisdictional facts, or both. *Id.* at 770. When the challenge to the jurisdiction is based on the sufficiency of facts in the pleadings to confer jurisdiction, we determine if the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction. *Id.* In making this determination, we review a trial court's ruling de novo. *Tex. Dep't of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001).

C. Applicable Law

The type of immunity that a government official can assert when sued depends on whether the official was sued in his individual or official capacity. Here, Sheriff Villanueva was sued in both capacities.

1. Individual Capacity

When a § 1983 claim is made against a government official in his individual capacity, qualified immunity from suit is available to that official. *Padilla v. Mason*, 169 S.W.3d 493, 501 (Tex. App.—El Paso 2005, pet. denied) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Scott v. Britton*, 16 S.W.3d 173, 180 (Tex. App.—Houston [1st Dist.] 2000, no pet)). "Government officials performing discretionary functions have qualified immunity from a suit for damages so long as the official's conduct does not violate clearly established constitutional or statutory rights of which a reasonable person would have been aware." *Id.* (citing *Wilson v. Layen*, 526 U.S. 603, 614 (1999); *Harlow*, 457 U.S. at 818).

In a qualified immunity analysis, we must determine "whether the defendant's conduct was objectively reasonable in light of the 'clearly established' law at the time of the alleged violation." *Hallmark*, 94 S.W.3d at 709 (citing *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Williams v. Bramer*, 180 F.3d 699, 702 (5th Cir. 1999), *clarified on other grounds*, 186 F.3d 633 (5th Cir. 1999); *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 434 (5th Cir. 1993)); *see also Padilla v. Mason*, 169 S.W.3d 493, 502 (Tex. App.—El Paso 2005, pet. denied).

Our analysis in this case requires us to apply a two-prong test: "(1) whether the plaintiff has alleged a violation of a clearly established constitutional right; and (2) whether the official's conduct was objectively reasonable at the time of the incident." *Padilla*, 169 S.W.3d at 502. "The threshold question [in applying the two-prong test] is whether the facts alleged, taken in the light most favorable to the party asserting the injury, show that the officer's conduct violated a constitutional right. If the facts do not show a constitutional violation, the official is entitled to immunity." *Id.* (citation omitted).

a. *Hartfield, Furman* Analysis

Enriquez argues that under *Hartfield v. Thaler*, 403 S.W.3d 234 (Tex. Crim. App. 2013), the trial court should have denied Sheriff Villanueva's plea to the jurisdiction. He argues that under *Hartfield*, his constitutional rights were violated when he was placed back in the penitentiary by Sheriff Villanueva. Enriquez asserts, first, that his death penalty sentence was not only reversed by the Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), but that both his conviction and sentence were erased. Enriquez reasons that when he filed his habeas corpus proceeding under article 11.08, *see* TEX. CODE CRIM. PROC. ANN. art. 11.08 (West 2015), given that his conviction and sentence were erased under *Furman*, he was only a detainee held under indictment pursuant to *Hartfield*. As a detainee, Enriquez claims, Sheriff Villanueva wrongfully and unlawfully imprisoned him when Sheriff Villanueva transferred him back to the penitentiary to continue

serving a sentence that did not exist under *Furman*. Enriquez asserts that as a result, he was subjected to false imprisonment and cruel and unusual punishment in violation of his constitutional rights.

We disagree with Enriquez's interpretation of *Furman* and on the application of *Hartfield*. In *Furman*¸ the Supreme Court granted certiorari on three death penalty cases, *Furman v. Georgia*, *Jackson v. Georgia,* and *Branch v. Texas*. *Furman,* 408 U.S. at 240. The issue before the Supreme Court was "whether the imposition of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?" *Id.* The Supreme Court held that "the imposition and carrying out of a death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." *Id.* The Supreme Court reversed only the death sentences and remanded the cases for further proceedings. *Id.* Interestingly, in a concurring opinion, Justice Douglas would have voted to vacate each judgment, which the majority did not. *Id.* Enriquez's argument that *Furman* erased both his conviction and sentence therefore fails. *Furman* simply reversed the death penalty sentence and left the conviction untouched. Therefore, *Furman* does not support Enriquez's proposition.

Enriquez's reliance on *Hartfield* is likewise misplaced. In *Hartfield*, on January 26, 1983, Jerry Hartfield was convicted of capital murder and sentenced to death. *Hartfield*, 403 S.W.3d at 236. On direct appeal, the Court of Criminal Appeals reversed his conviction and ordered a new trial. The Court of Criminal Appeals issued its mandate on March 4, 1983. On March 15, 1983, after the mandate issued, the governor signed an order to commute Hartfield's death sentence to life imprisonment. *Id.* Acting in accordance with the governor's commutation of the sentence to life in prison, the Department of Criminal Justice kept Hartfield in the penitentiary.

In 2006, Hartfield filed a pro se application for writ of habeas corpus. In 2007, he filed two separate applications for writ of mandamus and to compel a new trial, which the Court of

Criminal Appeals denied. Hartfield then filed a writ of habeas corpus in federal court claiming his Sixth and Fourteenth Amendment rights were violated. *Id.* The federal district court issued a report stating, among other things, that Hartfield was not in custody pursuant to the judgment of the state court because the court's judgment ceased to exist when the Court of Criminal Appeals issued its mandate ordering a new trial, and the governor's commutation was too late.

Eventually, the case was appealed to the Fifth Circuit, which asked the Court of Criminal Appeals to determine the status of the judgment of conviction after the mandate issued and the subsequent commutation of his sentence to life imprisonment. *Id.* at 236.

The Court of Criminal Appeals held that once it issued its mandate for a new trial, there was no conviction and no sentence to reduce. *Id.* at 239. "Because there was no longer a death sentence to commute, the governor's order had no effect." *Id.*

Unlike *Hartfield*, the facts alleged by Enriquez do not show that Enriquez's death sentence was at any time reversed and that a new trial was mandated. Instead, the facts alleged by Enriquez in his petition show that at the time his death sentence was commuted to life in prison by the governor pursuant to *Furman*, his conviction and sentence were still in full force. Being in full force, and unlike the facts in *Hartfield*, the commuted sentence to life imprisonment was valid. Accordingly, when Sheriff Villanueva transported Enriquez back to the penitentiary, Enriquez's life sentence was in full force.

b. <u>*Hartfield*, *Furman* Inapt</u>

We conclude Enriquez's reliance on *Furman* and *Hartfield* is misplaced. Enriquez's life imprisonment sentence was in full force at the time he was returned to the penitentiary by Sheriff Villanueva. Because Enriquez failed to allege a violation of a clearly established constitutional right, we need not address the second prong of the qualified immunity test (i.e., whether the official's conduct was objectively reasonable at the time of the incident).

For Enriquez's claims against Sheriff Villanueva in his individual capacity, Villanueva was entitled to qualified immunity from suit. But our inquiry does not end here. As stated, Enriquez argues Sheriff Villanueva is also not entitled to official immunity. We now address Enriquez's claims against Sheriff Villanueva in his official capacity.

2. Official Capacity

When a § 1983 claim is made against a government official in his official capacity, official immunity from suit is available to that official. *Dall. Cty. v. Gonzales*, 183 S.W.3d 94, 113 (Tex. App.—Dallas 2006, pet. denied) (citing *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417, 422 (Tex. 2004). "A governmental [official] is entitled to official immunity for (1) the performance of discretionary duties (2) that are within the scope of the [official]'s authority, (3) provided that the [official] acts in good faith." *Telhorster v. Tennell*, 92 S.W.3d 457, 461 (Tex. 2002).

In proving good faith, the official "must show that a reasonably prudent officer, under the same or similar circumstances, could have believed that his conduct was justified based on the information he possessed when the conduct occurred." *Id.* at 465. The test "does not inquire into 'what a reasonable person *would have done*,' but into 'what a reasonable officer *could have believed.*'" *Id.*

Enriquez's petition fails to allege any facts that support his position that Sheriff Villanueva is not entitled to official immunity. The record, on the other hand, shows a bench warrant issued by the district judge directed to Sheriff Villanueva to call upon the proper authorities of the Texas Department of Criminal Justice for permission to transfer Enriquez from the penitentiary to the Karnes County jail. The record further shows Texas Department of Criminal Justice's authorization to Sheriff Villanueva to transport Enriquez back to the penitentiary.

3. Conclusion

The evidence shows that, at the time Enriquez was transferred back to the penitentiary, Sheriff Villanueva was performing discretionary duties in good faith. A reasonably prudent officer faced with the same or similar circumstances and with the information Sheriff Villanueva had at the time could have believed he was justified to transport Enriquez back to the penitentiary.

For the reasons stated above, we overrule Enriquez's third and four issues relating to jurisdiction. We next turn to Enriquez's second issue dealing with sanctions.

SANCTIONS

Sheriff Villanueva filed a motion for sanctions against Enriquez under Chapter 14 of the Texas Civil Practice and Remedies Code. After the case was transferred to Karnes County, the trial court granted the motion stating in its order "that all causes of action asserted herein against Dwayne Villanueva, Karnes County Sheriff, *Individually and in his Official Capacity*, are dismissed as frivolous."

The appellate record does not contain any evidence on sanctions presented at the hearing but does indicate that a hearing took place.

A. Applicable Law

Chapter 14 of the Civil Practice and Remedies Code governs inmate litigation.

> This chapter applies only to an action, including an appeal or original proceeding, brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

TEX. CIV. PRAC. & REM. CODE ANN. § 14.002(a); *accord McLean v. Livingston*, 486 S.W.3d 561, 561 (Tex. 2016) (per curiam).

Section 14.003 allows a court to "dismiss a claim, either before or after service of process, if the court finds that . . . the claim is frivolous or malicious." TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(a); *McLean*, 486 S.W.3d at 562 n.1.

> (b) In determining whether a claim is frivolous or malicious, the court may consider whether:
> (1) the claim's realistic chance of ultimate success is slight;
> (2) the claim has no arguable basis in law or in fact;
> (3) it is clear that the party cannot prove facts in support of the claim; or
> (4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

TEX. CIV. PRAC. & REM. CODE ANN. § 14.003(b); *McLean*, 486 S.W.3d at 562 n.1.

If the claim is dismissed, "a court may order an inmate who has filed a claim to pay court fees, court costs, and other costs." TEX. CIV. PRAC. & REM. CODE ANN. § 14.006; *In re Douglas*, 333 S.W.3d 273, 293 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

B. Standard of Review

"We ordinarily review a Chapter 14 dismissal for abuse of discretion." *Camacho v. Rosales*, 511 S.W.3d 82, 85–86 (Tex. App.—El Paso 2014, no pet.); *accord Harrison v. Tex. Dep't of Criminal Justice-Institutional Div.*, 164 S.W.3d 871, 874 (Tex. App.—Corpus Christi 2005, no pet.); *Hickson v. Moya*, 926 S.W.2d 397, 398 (Tex. App.—Waco 1996, no writ). If the trial court, however, dismisses the claim for frivolousness without conducting a fact hearing, our review is de novo and is limited to whether the claim has any arguable basis in law. *Camacho*, 511 S.W.3d at 86; *see also Narbelek v. Dist. Attorney of Harris Cty.*, 290 S.W.3d 222, 228 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

"For a claim to have no arguable basis in law, it must be based on 'an indisputably meritless legal theory,' or be based on wholly incredible or irrational factual allegations." *Nabelek*, 290 S.W.3d at 228 (citing *Gill v. Boyd Distrib. Ctr.*, 64 S.W.3d 601, 603 (Tex. App.—Texarkana 2001, pet. denied) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989), and citing *Denton v.*

Hernandez, 504 U.S. 25, 33 (1992))). "An inmate's cause of action may not be dismissed merely because the court considers the allegations 'unlikely.'" *Id.* (citing *Gill*, 64 S.W.3d at 603–04 (quoting *Denton*, 504 U.S. at 33)). Instead, we look to the inmate's pleadings, we take the allegations as true to determine "whether, as a matter of law, the petition stated a cause of action that would authorize relief." *Camacho*, 511 S.W.3d at 86 (quoting *Brewer*, 268 S.W.3d at 770). "A claim has no arguable basis in law [when] based on (1) wholly incredible or irrational factual allegations, or (2) an indisputably meritless legal theory." *Id.* (citing *Nabelek*, 290 S.W.3d at 228).

C. Arguments

Enriquez argues that his lawsuit should not have been dismissed under Chapter 14 because the statute does not apply to Sheriff Villanueva and only applies to employees of the Texas Department of Criminal Justice.

Sheriff Villanueva argues that Enriquez's claims were properly dismissed under Chapter 14 because Enriquez is an inmate, his claims are subject to the inmate litigation statutes, and his lawsuit is frivolous.

D. Analysis

We disagree with Enriquez's argument that Chapter 14 only applies to employees of the Texas Department of Criminal Justice. Except for an action brought under the Family Code, Chapter 14 applies to any action brought by an inmate in which the inmate files an affidavit or unsworn declaration of inability to pay costs. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002; *McLean*, 486 S.W.3d at 561.

Enriquez, an inmate, filed an unsworn statement of "Inability to Afford Payment of Court Costs" with the district court in a § 1983 case, one that did not deal with the Family Code. Therefore, Chapter 14 properly applies. *See McLean*, 486 S.W.3d at 561.

Having resolved Enriquez's applicability of Chapter 14 argument, we must determine whether the dismissal of the suit on frivolous grounds was appropriate. In our analysis, we ask whether Enriquez's claims have any arguable basis in law.

As stated above, Enriquez's § 1983 claims were based on the history of Enriquez's conviction and sentencing and his claim that he was a detainee pursuant to *Furman* and *Hartfield*. In our jurisdictional analysis, we concluded neither case applied to the facts and that, at the time Enriquez was transferred back to the penitentiary, his constitutional rights were not violated. There being no violation of his constitutional rights, Enriquez, as a matter of law, is not entitled to assert a 42 U.S.C. § 1983 claim for false imprisonment or cruel and unusual punishment against Sheriff Villanueva. We, therefore, overrule Enriquez's second issue relating to sanctions.

CONCLUSION

Because Sheriff Villanueva was sued in his official capacity, venue was mandated in Karnes County. Therefore, the Nueces County district court properly transferred the case to Karnes County. Further, Sheriff Villanueva is immune from Enriquez's lawsuit in both his personal and official capacities. We affirm the Karnes County district court's order granting Sheriff Villanueva's plea to the jurisdiction and dismissing Enriquez's claims as frivolous.

Patricia O. Alvarez, Justice