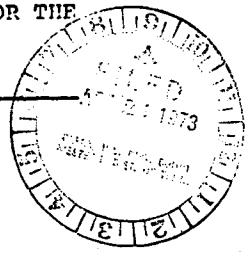
IN THE UNITED STATES DISTRICT COUPT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION



JAMES EARL RAY,

Plaintiff,

vs.

GEROLD FRANK, et al.

Defendants.

CIVIL ACTION NO. C-73-126

MOTION TO DISMISS

TO THE HONORABLE HARRY W. WELLFORD, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION:

Comes now your defendant Phil M. Canale, Jr., the duly elected, qualified and acting District Attorney General for the Fifteenth Judicial Circuit, County of Shelby, State of Tennessee, and moves the Court, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, and pursuant to the provisions of Title 28, U.S.C. Section 1915 (d), to dismiss the within complaint as it relates to him, and for reasons therefor would respectfully show and state as follows:

1. The Complaint fails to state a claim upon which relief can be granted.

2. The complaint is frivolous under the provisions of Title 28, U.S.C., Section 1915 (d).

3. The Complaint fails to state a claim upon which relief can be granted in that your defendant, a prosecutor, is entitled to quasi-judicial immunity from suits for damages under the Federal Civil Rights Act.

4. The complaint fails to state a claim upon which relief can be granted in that the complaint, while couched in terms of the Federal Civil Rights Act, is in reality a proceding to contest the legality of complainant's present confinement, and is in effect a habeas corpus proceeding, without any allegation being made of exhaustion of State remedies.

Your defendant avers that complainant has in fact filed a Petition for Writ of Habeas Corpus in the United States District Court for the Middle District of Tennessee, in Cause Number 6800, Civil Action attacking the very confinement he is here complaining of, and the Court on March 30, 1973, entered Memorandum Decision Denying and Dismissing Petition for Writ of Habeas Corpus. A certified copy of this Order is attached hereto and marked Exhibit A, and incorporated by reference herein.

5. The complaint fails to state a claim upon which relief can be granted, in that, giving the complainant every benefit of the doubt, liberally construing his pro se pleadings in his favor, he appears to be claiming that your defendant acted with the other defendants in such a way as to invade complainant's privacy, and that, if this be a proper analysis of complainant's complaint,

a. Said allegation of invasion of privacy is a State tort only, and does not give rise to a Federal Civil Rights action for damages, and

b. Complainant James Earl Ray is a prisoner as the result of a crime which resulted in international news coverage, and is thus a public figure, and no cause of action for invasion of privacy will lie.

6. The complaint fails to state a claim upon which relief can be granted, in that no cause of action is stated, even under the most liberal interpretation of the complaint, under Title 42, U.S.C. Section 1983 and 1985, and further fails to set forth specific facts showing a deprivation of any of his Federally protected rights.

7. The complaint fails to state a claim upon which relief can be granted, because the complaint on its face alleges that the complained-of activities of your defendant occurred more than one year prior to the bringing of this Civil Rights action, and thus the complaint is barred by the statute of limitations (Tennessee Code Annotated, Section 28-304).

WHEREFORE, PREMISES CONSIDERED, your defendant Phil M. Canale, Jr., District Attorney General, prays that the Complaint herein be dismissed as to him.

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL
FIFTEENTH JUDICIAL CIRCUIT
STATE OF TENNESSEE

BY: James H Allen
JAMES H. ALLEN
ASSISTANT DISTRICT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of April, 1973, I served a copy of the within Motion to Dismiss upon complainant James Earl Ray, #65477, Tennessee State Penitentiary, Station A, Nashville, Tennessee 37203, by postage paid mail, and upon David M. Pack, Attorney General of Tennessee, Supreme Court Building, Nashville, Tennessee, 37219, Attorney for defendant Robert K. Dwyer, and upon Robert M. Callagy, Attorney for defendants Gerold Frank and Doubleday Publishing Company, 277 Park Avenue, New York, New York 10017, by mailing a copy hereof to their offices, postage prepaid.

James H Allen
JAMES H. ALLEN