

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted February 6, 2008*

Decided February 6, 2008

By the Court:

No. 07-2798

TERENCE B. RICHARDS,
Plaintiff-Appellant,

v.

PAUL FLYNN,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division

No. 07 C 1528

Robert W. Gettleman,
Judge.

O R D E R

Terence Richards pleaded guilty to two counts of transmitting threatening communications in interstate commerce, *see* 18 U.S.C. § 875(c), and was sentenced in February 2007 to a total of thirty months' imprisonment. His direct appeal is pending in this court. *See United States v. Richards*, No. 07-1429 (7th Cir. filed Feb. 26, 2007). In this action under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389 (1971), Richards complains about the ineffective assistance he says he received from his attorney, Assistant Federal Defender Paul Flynn. The district court dismissed Richards's complaint at initial screening, *see* 28 U.S.C. § 1915A, concluding that it fails to state a claim. The district court noted that a *Bivens* action for legal malpractice cannot be maintained against appointed lawyers, even those employed by the federal government, because

* Because of the procedural posture of this case (it was dismissed on preliminary screening prior to service), the defendant is not participating in this appeal. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

they do not act under color of law. *See Polk County v. Dodson*, 454 U.S. 312, 317-18 (1981); *Haley v. Walker*, 751 F.2d 284, 285 (8th Cir. 1984); *Cox v. Hellerstein*, 685 F.2d 1098, 1099 (9th Cir. 1982). The district court also informed Richards that a civil rights action cannot be used to challenge a criminal conviction. *See Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973); *Savory v. Lyons*, 469 F.3d 667, 670 (7th Cir. 2006).

We agree with the district court on both points. Accordingly, the judgment is AFFIRMED. The district court told Richards that he incurred a “strike” under 28 U.S.C. § 1915(g) for filing a complaint that fails to state a claim, and we note that he now has incurred another “strike” for filing a frivolous appeal.