

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-4406

JOSE FREMONDE XENOS,
Appellant

v.

NURIA SLOJUND

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 10-cv-04854)
District Judge: Honorable James Knoll Gardner

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
February 28, 2011

Before: McKEE, Chief Judge, ALDISERT and WEIS, Circuit Judges

(Opinion filed : April 18, 2011)

OPINION

PER CURIAM.

Pro se appellant, Jose Fremonde Xenos, filed the underlying action pursuant to 42 U.S.C. § 1983 against Nuria Slojund, Esq., his court-appointed appellate attorney. Xenos complained about Slojund's actions during the course of his appeal from a state criminal proceeding which apparently ended adversely to him. The District Court dismissed Xenos' complaint sua sponte for lack of legal merit in accordance with 28 U.S.C. § 1915(e). For the reasons provided by the District Court, we agree and will affirm.

As the District Court explained, a defense attorney “does not act under color of state law when performing a lawyer’s traditional functions as counsel in a criminal proceeding.” Polk County v. Dodson, 454 U.S. 312, 325 (1981). Because the complaint contains no allegations to suggest that Slojund is a state actor properly sued under § 1983, we conclude that the District Court did not err in dismissing Xenos’ complaint.¹ Accordingly, we will summarily affirm the judgment of the District Court as no substantial question is presented by this appeal. See Third Circuit LAR 27.4 and I.O.P. 10.6.

¹ Any attack on the criminal proceeding itself or the sentence ultimately imposed falls within the purview of 28 U.S.C. § 2254, not an action filed under 42 U.S.C. § 1983.