

October 20, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40180  
Conference Calendar

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ROBERT HADDIX, JR.,

Plaintiff-Appellant,

versus

STEPHANIE STEPHENS, Assistant District Attorney; JAY  
JACKSON, Attorney at Law; JOHN HEATH, JR., Attorney at Law,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:03-CV-254  
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Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:\*

Robert Haddix, Jr., Texas prisoner # 1175826, filed a 42 U.S.C. § 1983 complaint alleging that the defendants had conspired to deny him a fair and impartial trial. The district court held that Haddix's claims were barred by Heck v. Humphrey, 512 U.S. 477 (1994). Haddix has failed to brief the district court's Heck determination, and, therefore, that issue is waived and unreviewable. See Yohey v. Collins, 985 F.2d 222, 224-25

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(5th Cir. 1993). He consequently cannot show the district court's resolution of his claims to be erroneous.

Haddix's appeal therefore lacks arguable merit and is dismissed as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Haddix is warned that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We warn Haddix that once he accumulates three strikes, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; STRIKE WARNING ISSUED.