

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-11197  
Conference Calendar

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ANSLUN HUTCHINSON, III,

Plaintiff-Appellant,

versus

WICHITA FALLS POLICE  
DEPARTMENT; PRUITT, detective,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:97-CV-172  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Anslun Hutchinson, III, Texas prisoner # 16894, appeals from the dismissal as frivolous of his 42 U.S.C. § 1983 complaint alleging malicious prosecution. Because Hutchinson has not been exonerated of the charges, his claim has not accrued, and he thus has no cause of action under § 1983. Heck v. Humphrey, 512 U.S. 477, 489 (1994). A dismissal with prejudice does not preclude a later claim that meets the preconditions for suit. Johnson v. McElveen, 101 F.3d 423, 424 (5th Cir. 1996).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Hutchinson's appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

DISMISSED.