

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41417
Summary Calendar

BOBBY JOE KELLY,

Plaintiff-Appellant,

versus

DARWIN SANDERS, Warden; M.L. SCOTT;
SUNDAY KADZIESKI, Ad Seg. Officer;
ERIC PARKER, Ad Seg. Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:00-CV-196

May 25, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Bobby Joe Kelly, Texas state prisoner # 626124, argues that the district court erred in dismissing his 42 U.S.C. § 1983 complaint alleging that the defendant prison officers filed false disciplinary charges against him in retaliation for his filing prison grievances.

Insofar as Kelly raised claims that he was denied due process during disciplinary proceedings, the district court correctly dismissed the claims pursuant to Heck v. Humphrey, 512

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S. 477 (1994) because Kelly admits that his disciplinary convictions have not been reversed, expunged, or otherwise invalidated. Thus, the dismissal of the due process claims is AFFIRMED.

However, Kelly's allegations that the defendants filed false disciplinary charges against him in response to his filing grievances arguably stated claims of retaliation which are not subject to dismissal under Heck. See Woods v. Smith, 60 F.3d 1161, 1164 (5th Cir. 1995); Gibbs v. King, 779 F. 2d 1040, 1046 (5th Cir. 1986). The district court erred in dismissing the retaliation claims at this stage of the proceeding. Therefore, the judgment is VACATED insofar as it dismissed the retaliation claims and the case is REMANDED to the district court for further consideration of those claims. We express no view on the merits.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.