

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-60960  
Summary Calendar

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JOHN AARON VANDERBURG,

Plaintiff-Appellant,

versus

ROBERT L. JOHNSON; CHRISTOPHER EPPS;  
JOHN HOPKINS; LARRY HARDY; BARBARA BAILEY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:00-CV-746-WS  
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July 1, 2002

Before JOLLY, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:\*

John Arron Vanderburg, former Mississippi inmate # 65991, appeals from Magistrate Judge (MJ) Sumner's dismissal as moot of his 42 U.S.C. § 1983 complaint after construing it as a 28 U.S.C. § 2254 petition for habeas relief. Vanderburg's claim for monetary relief distinguished his civil rights complaint from an action for habeas relief. The 42 U.S.C. § 1983 complaint was properly before the district court since Vanderburg demonstrated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that his alleged unlawful sentence had been declared invalid.  
See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Accordingly,  
MJ Sumner's order of dismissal is VACATED and the case is  
REMANDED for further proceedings.

VACATED AND REMANDED.