

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 7, 2008

No. 07-60988

Charles R. Fulbruge III
Clerk

MARK COUGLE,

Plaintiff-Appellant,

v.

COUNTY OF DESOTO, MISSISSIPPI; MARK BLACKSON, Individually
and in His Official Capacity as a DeSoto County Sheriff Deputy,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi, Delta Division
No. 2:06CV139-M-A

Before DAVIS, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Plaintiff Mark Cogle appeals the grant of the defendants' Motion for Summary Judgment. Based on our agreement with the district court that Cogle's claims under 42 U.S.C. § 1983 are barred by the application of Heck v. Humphrey, 512 U.S. 477 (1994), we affirm.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

I.

In August 2006, Cogle filed a complaint for money damages against the County of Desoto and Mark Blackson, a detective in the Desoto County Sheriff's Office, alleging wrongful arrest, wrongful search and seizure, and malicious prosecution. The arrest, search and seizure, and prosecution occurred when Blackson received a complaint from Ralph Yount alleging that Cogle had possession of a motorcycle and lawn tractor that belonged to Yount and refused to return them. Cogle had agreed to store the items for Yount, but refused to return them unless Yount paid a storage fee for the items.

At Blackson's request, Cogle came to the sheriff's office to be interviewed. According to Blackson, Cogle confirmed the information provided by Yount and also confirmed that he carried a firearm in conjunction with his repossession business. Because Cogle had previously been convicted of grand larceny and sentenced to three years probation, it was illegal for Cogle to possess a firearm.

Based on Cogle's alleged admission, Blackson obtained an arrest warrant for Cogle and a search warrant for his house. No firearm was found in the search. Blackson later learned the location of Yount's motorcycle and tractor, recovered them and returned them to Yount. A Desoto County grand jury no billed the firearm and grand larceny charges against Cogle. However, in August 2005, Cogle's probation was revoked and Cogle was required to serve one year in jail. The probation violation form states that Cogle "has been arrested and charge (sic) with theft - other, possession of a weapon by a convicted felon and taking away a spray rig . . . [and] Harley-Davidson fat boy bike belonging to Ronald and Bridgette Yount." The Order Revoking Probation listed three violations of the terms of Cogle's probation: "failed to commit no offense", "failed to permit MDCC to visit at home or elsewhere", and "failed to remain in specified area." Blackson testified at the probation hearing about the events leading up to Cogle's arrest and the seizure of Yount's property.

Cogle's complaint in this case denies that he admitted to possessing a firearm and contends that there was no probable cause for his arrest. He also alleges that Blackson violated his fourth amendment rights by seizing the motorcycle and lawn tractor without warrants or probable cause. The district court granted the defendants' motion for summary judgment dismissing Cogle's § 1983 claims. Cogle appeals.

II.

The district court granted the defendants' motion for summary judgment on the basis that the instant action is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Supreme Court held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose lawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." 512 U.S. at 486-487. *Heck* applies to proceedings that call into question the fact or duration of probation. *Cotton v. Tex. Dep't Criminal Justice*, 35 F.3d 560, 560 (5th Cir. 1994)(unpublished); *Jackson v. Vannoy*, 49 F.3d 175, 177(5th Cir. 1995) (applying *Heck* to § 1983 claim that would, if successful, imply the invalidity of the revocation of plaintiff's probation and parole).

The district court correctly recognized that the allegations of unlawful search and arrest in this case, if true, would necessarily imply the invalidity of the revocation of Cogle's probation, which was based, at least in part, on the same search and arrest. Cogle has not demonstrated that the revocation of his probation has been reversed, expunged, set aside or called into question as required by *Heck* as a prerequisite for this case to proceed. Summary judgment in favor of the defendants was therefore proper.

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III.

For the foregoing reasons, we affirm the district court's grant of summary judgment in favor of the defendants dismissing Cogle's § 1983 claims pursuant to Heck v. Humphrey.

AFFIRMED.