

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-7813

(Summary Calendar)

LONNIE L. BELL,

Plaintiff-Appellant,

versus

EDDIE M. LUCAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Mississippi
CR 3 92 35 B D

June 25, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Lonnie Bell, a state prisoner proceeding pro se and in forma pauperis ("IFP"), brought suit under 42 U.S.C. § 1983 (1988), claiming several civil rights violations. The district court dismissed Bell's suit with prejudice, finding that his claims were more suited for habeas corpus relief. Because the district court improperly dismissed Bell's suit with prejudice, we vacate the district court's judgment and remand for proceedings consistent with this opinion.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

In 1978, Lonnie Bell was convicted of murder and sentenced to 25 years in a Mississippi prison. After initially serving only 18 months, he was placed on 5 years parole. Bell's parole was subsequently revoked, causing him to serve an additional 49 months in prison. Bell was then paroled again, and is currently serving an 18 year parole term.

Bell brought the underlying action, pursuant to 42 U.S.C. § 1983, claiming that he was denied due process because his parole was revoked without a hearing; that he was subjected to double jeopardy when he was resentenced after his parole was revoked; and that he was denied equal protection because his parole revocation was racially motivated. The magistrate judge determined that Bell's claims undermined the fact and duration of his parole confinement, and therefore concluded that Bell's sole federal cause of action was to file a writ of habeas corpus.¹ See 28 U.S.C. § 2254 (1988). The magistrate judge recommended the case be dismissed without prejudice, assumedly so that Bell could still pursue relief under § 1983 after having exhausted his habeas remedies. The district court approved and adopted the recommendation, but ordered the cause be dismissed with prejudice, rather than without prejudice.

We agree that Bell must exhaust his habeas corpus remedies before pursuing relief under § 1983. Although Bell labeled his suit as a claim for damages under § 1983, Bell was actually

¹ Habeas corpus relief is available to those who are not currently in confinement, but still "in custody" (i.e., on parole). *Caldwell v. Line*, 679 F.2d 494, 497 (5th Cir. 1982).

challenging the fact and duration of his parole confinement. See *Jackson v. Torres*, 720 F.2d 877, 879 (5th Cir. 1983) ("The relief sought by the prisoner or the label he places upon the action is not the governing factor."). Bell claimed that he was being "held . . . in unlawful confinement," and that his current 18 year parole term was excessive. See Record on Appeal at 7, 9. Because Bell's claims undermined the validity of his parole confinement, he was required to exhaust his habeas remedies before seeking § 1983 relief. *Hernandez v. Spencer*, 780 F.2d 504, 505 (5th Cir. 1986).²

We disagree, however, with the district court's dismissal of Bell's § 1983 suit with prejudice. Assuming that his § 1983 suit is not time-barred by the Mississippi three-year statute of limitations, Bell may be entitled to relief under § 1983 after exhausting his habeas corpus remedies. See Miss. Code Ann. § 15-1-49 (Supp. 1991); see also *James by James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990).

We therefore **VACATE** the district court's judgment, and **REMAND** for a determination as to whether Bell's § 1983 suit is time-barred. If not time-barred, the court should modify its judgment to be a dismissal without prejudice, if such a dismissal will not adversely affect Bell's civil rights claims, or the court should stay Bell's § 1983 action, pending exhaustion of his federal habeas remedies. See, e.g., *Sheppard v. State of Louisiana Bd. of Parole*,

² The magistrate judge noted that Bell only claimed to have exhausted his state habeas remedies. See Record on Appeal at 16. A § 1983 litigant who challenges the fact or duration of his confinement must exhaust *both* state and federal habeas remedies. *Hernandez*, 780 F.2d at 505.

873 F.2d 761, 762 (5th Cir. 1989); *Serio v. Members of Louisiana State Bd. of Pardons*, 821 F.2d 1112, 1119-20 (5th Cir. 1987).