

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1749  
Conference Calendar

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LEROY HICKS,

Plaintiff-Appellant,

versus

GARY D. UNELL, Attorney,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-1136-R  
- - - - -  
(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact of confinement. Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). An action under 42 U.S.C. § 1983 action is the appropriate remedy for recovering damages for mistreatment or for illegal administrative procedures. Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). To determine which remedy a prisoner should pursue, the Court looks beyond the relief sought

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\* Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to determine whether the claim, if proved, would factually undermine or conflict with the state court conviction. Id. at 373. If the basis of the claim goes to the constitutionality of the conviction, a petition for habeas corpus relief is the exclusive initial federal remedy. Id.

Leroy Hicks contends that he was arrested without probable cause and that his attorney, the prosecuting attorney, and the judge conspired to maliciously prosecute and falsely imprison him for a crime which he did not commit. Because Hicks' complaint challenges the constitutionality and fact of his confinement and conviction, Hicks must exhaust his available habeas remedies before bringing his claim in a civil rights action. See Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117 (5th Cir. 1987). The district court's dismissal without prejudice of Hicks' 42 U.S.C. § 1983 action is AFFIRMED. IT IS FURTHER ORDERED that Hicks' requests for appointment of appellate counsel and petition for default judgment, discovery, and evidentiary hearing are DENIED.