

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3306
Conference Calendar

CURTIS BROUSSARD,

Plaintiff-Appellant,

versus

LEGISLATURE OF THE STATE OF
LOUISIANA and THE STATE OF
LOUISIANA,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-0864-N-2

- - - - -
August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Curtis Broussard's action under 28 U.S.C. § 1983 also challenges the fact of his confinement. A § 1983 action is the appropriate remedy for recovering damages for mistreatment or illegal administrative procedures. Richardson v. Fleming, 651 F.2d 366, 372 (5th Cir. 1981). The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

fact of confinement. Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); see also Deters v. Collins, 985 F.2d 789, 792-96 (5th Cir. 1993).

To determine which remedy a prisoner should pursue, the Court looks beyond the relief sought to determine whether the claim, if proved, would factually undermine or conflict with the state court conviction. Richardson, 651 F.2d 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. If a complaint contains both habeas and § 1983 claims, the district court should separate the claims and decide the § 1983 claims. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987).

An exception to the general rule that plaintiffs must initially pursue federal habeas relief when they challenge the fact of their confinement occurs when the defendants are entitled to absolute immunity. Serio, 821 F.2d at 1115. Even if a civil rights plaintiff's factual allegations are true and he is entitled to habeas relief, the plaintiff cannot collect damages if the defendants are shielded by absolute immunity. Id. Since dismissal of the damages claim resolves none of the merits underlying the plaintiff's state claim, and poses no threat to the principle of comity, there is no reason to defer adjudication on the immunity issue. Id.

Both the State and the State Legislature are entitled to absolute immunity. Hopkins v. Clemson Agricultural College, 221

U.S. 636, 642, 31 S.Ct. 654, 55 L.Ed. 890 (1911) (State); Hughes v. Tarrant County Texas, 948 F.2d 918, 920 (5th Cir. 1991) (State Legislature). As a result, the district court's dismissal of the § 1983 claim, on immunity grounds, is AFFIRMED. Further, because Broussard has not demonstrated that he satisfies the prerequisites to a class under Fed. R. Civ. P. 23(a), and because the issue is moot in light of the denial of the § 1983 action, the district court's denial of class action status is AFFIRMED.

Although Broussard is entitled to bring another habeas action or civil rights suit against other defendants, as he appears inclined to do, for the reasons described above, he must raise all issues that directly or indirectly challenge the validity of his convictions in state and federal habeas actions. See Serio, 821 F.2d at 1117, 1119. Broussard moved this Court to allow him to amend his complaint by dropping the State Legislature and the State as defendants and substitute the State Attorney General and all Parish District Attorneys. Loose papers, tab A. This motion was not raised in the district court and is not properly before this Court.

AFFIRMED.