

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8078

Summary Calendar

ARTURO SOLIS,

Plaintiff-Appellant,

versus

CIRCLE K CORP., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CA-944)

(September 19, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Arturo Solis filed suit under 42 U.S.C. § 1983 asserting that his present imprisonment is the product of a grand conspiracy to discriminate against him because he is a Mexican-American. The alleged participants in the conspiracy include many of his former criminal defense attorneys, the members of two grand juries, several individual law enforcement officers, several court clerical

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

employees, a state district judge, more than one prosecuting attorney, all of the members of the Texas Court of Appeals for the Fourth Supreme Judicial District, and the Presiding Judge of the Texas Court of Criminal Appeals.

The magistrate judge concluded that many of Solis' claims cannot proceed because the defendants are entitled to either absolute or qualified immunity, that others fail because the statute of limitations on them has run, and that all lack a sufficiently firm basis in specific factual allegations to withstand dismissal as frivolous pursuant to 28 U.S.C. § 1915(d). The district court adopted the magistrate judge's memorandum and recommendation, and dismissed Solis' case with prejudice.

The magistrate judge did not address whether Solis had exhausted available state and federal habeas remedies before he brought his civil rights claims. If Solis had not, the magistrate judge acknowledged, the appropriate action would usually be to dismiss Solis' claims without prejudice and suspend the statute of limitations until Solis exhausted those remedies.¹ Because of the weakness of Solis' claims, however, the magistrate judge concluded that dismissal without prejudice would "amount to an exercise in futility."

We agree that the district court did not err in dismissing Solis' claim, but for a different reason, supplied by a recent decision by the Supreme Court. In Heck v. Humphrey, 114 S. Ct.

¹ See Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992).

2364, 2372 (1994), the Court held that no claim is stated when the allegation implicates an extant conviction. A judgment in favor of Solis would necessarily implicate the validity of the Solis' conviction. Therefore, until Solis' conviction 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" an action under § 1983 does not lie. Id. The dismissal of Solis' claims was correct and the judgment of the district court is AFFIRMED.