

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10442
Summary Calendar

HARVEY SPARKS, JR.,

Plaintiff-Appellant,

versus

CAREY BALENTINE, Chief of Police,
Winters Police Department, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(6:94-CV-23)

(August 3, 1994)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges:

PER CURIAM:*

Harvey Sparks, Jr., a prisoner of the Runnels County, Texas jail, appeals the 28 U.S.C. § 1915(d) dismissal of his *pro se, in forma pauperis* 42 U.S.C. § 1983 civil rights suit. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Sparks was arrested by Kenneth Schooler, a Winters, Texas police officer, for driving while under the influence. He ultimately was sentenced to 20 years imprisonment.¹ Using a **Watson**² prisoner complaint form, Sparks sued Schooler and Police Chief Carey Balentine, alleging that Schooler illegally stopped, falsely arrested and harassed him, and gave false testimony against him. The district court dismissed the suit as frivolous under 28 U.S.C. § 1915(d), finding that the complaint "in large part, challenges the fact and/or duration of Plaintiff's incarceration." The pleading was construed as requesting habeas corpus relief and was rejected for failure to exhaust state remedies. The court also found that "harassment by Defendant which resulted in Plaintiff's parole being revoked is not actionable," that "Plaintiff has not alleged any acts of wanton or callous infliction of pain, and that vigilance of the police in investigating criminal activity is violative of no right." Sparks timely appeals.

Analysis

As we recently observed in **Eason v. Thaler**, "[a]n *in forma pauperis* complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact."³

Sparks alleged that he had been harassed and illegally

¹While Sparks suggests the 20-year term was based solely on the DUI conviction, the record indicates a revocation of parole which may have tilted the balance.

²**Watson v. Ault**, 525 F.2d 886 (5th Cir. 1976).

³14 F.3d 8, 9 (5th Cir. 1994).

arrested by Schooler, leading to his present incarceration. The trial court concluded that habeas relief was the only remedy available to Sparks.

The intervening decision by the Supreme Court in **Heck v. Humphrey**⁴ has changed the law applicable to the situation presented herein. Whereas before we routinely deferred to an exhaustion of remedies by habeas corpus review, that rubric no longer controls. In **Heck** the Supreme Court directed that

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness 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.⁵

Under the **Heck** ruling, Sparks cannot assert section 1983 relief unless and until the order of imprisonment of which he complains is "reversed . . . expunged . . . declared invalid . . . or called into question by a federal . . . writ of habeas corpus." None of those requisites appertain herein. His complaint lacks an arguable basis in law or fact and it properly was dismissed under 28 U.S.C. § 1915(d).

AFFIRMED.

⁴114 S.Ct. 2364 (1994).

⁵**Id.**