

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10506  
Conference Calendar

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CHRISTOHER LEVINGSTON,

Plaintiff-Appellant,

versus

RON SIEBERT ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:94-CV-828-R  
- - - - -  
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Christopher Don Levingston appeals the judgment of the district court dismissing his civil rights action. In his complaint and in his brief on appeal, Levingston asserts that his arrest, and implicitly, his conviction and sentence are unconstitutional because Detective Ron Siebert's comments caused him to plead guilty to a crime he did not commit.

The question before the Court is whether Levingston's claim is cognizable under § 1983. See Heck v. Humphrey, No. 93-6188,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1994 WL 276683, at \*3-4, (U.S., June 24, 1994). In Heck, the Supreme Court held 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, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Id. at \*5 (footnote omitted).

As a first step in the analysis, a "court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." Id.

Following the dictates of Heck, we conclude that a judgment in favor of Levingston would "necessarily imply the invalidity of his conviction or sentence." Id. However, Levingston's conviction has been not been invalidated. Levingston states that he has filed a state application for postconviction relief, but that case is pending. Thus, his claim for damages challenging the legality of the conviction is not cognizable under § 1983.

AFFIRMED.