UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10532
Summary Calendar

TYRONE RAY COTTON,

Plaintiff-Appellant,

versus

TEXAS DEPT. OF CRIMINAL JUSTICE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(3:94-CV-523-G)

(August 26, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:[*]

Tyrone Ray Cotton, a Texas state prisoner, appeals the dismissal as frivolous of his *pro se, in forma pauperis* civil rights action against the Texas Department of Criminal Justice and three members of the Texas Parole Board. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Cotton was convicted of assault with a deadly weapon and sentenced to prison for 15 years. Released from custody on parole, he was arrested for possession of a controlled substance. He was not prosecuted on that charge but proceedings to revoke his parole were initiated and he was returned to prison.

Cotton filed the instant action seeking money damages for claimed improprieties in the parole revocation proceedings. After reviewing Cotton's complaint, including his answers to a questionnaire designed to develop the specifics of his claims, the magistrate judge recommended dismissal of the action as frivolous under 28 U.S.C. § 1915(d). The district court adopted that recommendation and Cotton timely appealed.

Analysis

On appeal Cotton reiterates his complaint; he does not address the findings and conclusions of the trial court. On review we find no error.

The holding of the recent Supreme Court decision, **Heck v. Humphrey**,[1] clearly bars Cotton's claim for damages. We previously have held that an action attacking the validity of parole proceedings calls into question the fact and duration of confinement.[2] **Heck** teaches that

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a

[1]114 S.Ct. 2364 (1994).

[2]**Jackson v. Torres**, 720 F.2d 877 (5th Cir. 1983).

> 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.[3]

It is apparent that Cotton's claim is precisely the type of section 1983 suit that **Heck** proscribes.

In addition to the **Heck** barrier, it is now manifest that an *in forma pauperis* section 1983 action should be dismissed as frivolous if it lacks an arguable basis in fact or law.[4] As the court *a` quo* determined, immunity precluded the instant claim for damages against each of the defendants. The TDCJ, as a state agency, is cloaked with eleventh amendment immunity.[5] The remaining defendants, members of the Parole Board who are sued only for actions taken in their official capacities, also enjoy that immunity.[6] The district court correctly found that Cotton's suit lacked an arguable basis in law.

Finally, Cotton's pleadings properly were construed as a petition for habeas corpus relief.[7] A state prisoner's petition for habeas corpus is not cognizable in federal court unless and

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[3]114 S.Ct. at 2367.

[4]**Eason v. Thaler**, 14 F.3d 8 (5th Cir. 1994).

[5]See Tex. Gov't Code Ann. § 492.010(c); **Voison's Oyster House v. Guidry**, 799 F.2d 183 (5th Cir. 1986).

[6]**Walter v. Torres**, 917 F.2d 1379 (5th Cir. 1990).

[7]**Jackson**.

until his state habeas remedies have been exhausted.[8] Cotton's state remedies have not been exhausted.

The judgment of the district court is in all respects AFFIRMED.

[8] **Johnson v. Pfeiffer**, 821 F.2d 1120 (5th Cir. 1987).