

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10770
Conference Calendar

GOVIE J. BECK,

Plaintiff-Appellant,

versus

DALLAS COUNTY, TEXAS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-1279-P

- - - - -
(January 26, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Govie J. Beck challenges the dismissal of his civil rights complaint pursuant to Fed. R. Civ. P. 12(b)(6). A dismissal pursuant to Fed. R. Civ. P. 12(b)(6) is reviewed de novo. Giddings v. Chandler, 979 F.2d 1104, 1106 (5th Cir. 1992). On a motion to dismiss for failure to state a claim, the plaintiff's factual allegations, though not his conclusional allegations or legal conclusions, are accepted as true. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). "Unless

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, the complaint should not be dismissed for failure to state a claim" Id. at 284-85 (internal quotation and citation omitted). The facts are taken from the plaintiff's complaint and the attachments to the complaint. Fed. R. Civ. P. 10(c); Neville v. American Republic Ins. Co., 912 F.2d 813, 814 n.1 (5th Cir. 1990).

The Supreme Court directed in Heck that:

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.

114 S. Ct. at 2372 (footnote omitted).

The Heck court reasoned that § 1983 claims related to an alleged unlawful conviction or sentence were analogous to the common law tort of malicious prosecution, which requires the allegation and proof of the termination of the prior criminal proceeding in favor of the accused. Id. at 2371-72.

Accordingly, Beck cannot assert § 1983 relief unless and until the duration of the imprisonment about which he complains is "reversed . . . expunged . . . declared invalid . . . or called into question by a federal . . . writ of habeas corpus." Id. at 2372. Inasmuch as he states that his appeal of his state-court

convictions is pending, his complaint fails to state a claim for which relief can be granted.

Beck asks this Court to release him from jail, to "have an attainable bond set during the appeals process," to be put on a home monitor until the appeals process is over, and/or to keep the § 1983 complaint alive until a final decision has been made by the appeals court. Appellant's brief, 1. As discussed above, under Heck, his § 1983 complaint cannot be stayed because he has no cause of action at this time. Heck, 114 S. Ct. at 2372. As to his request for release from jail, an attainable bond, and to be put on a home monitor, no authority exists warranting such relief.

The judgment of the district court is AFFIRMED.