

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10789  
Conference Calendar

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JOHN ANDREW HOLLEY,

Plaintiff-Appellant,

versus

WESLEY GRIFFIN 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-853-X

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(January 27, 1995)

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

PER CURIAM:\*

John Andrew Holley, a Texas state prisoner, proceeding pro se and in forma pauperis appeals the dismissal of his civil rights suit against Wesley Griffin, Texas parole officer, N. Rideaux, supervisory regional parole officer, and Winona Wilson-Nules, board member of the Texas Board of Pardons and Paroles. The Supreme Court recently held that in order to recover damages for harm caused by actions whose unlawfulness would render a conviction or sentence invalid, the plaintiff must prove that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction or sentence was reversed on appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, \_\_\_ U.S. \_\_\_, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994). Heck requires the district court to "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. Holley's § 1983 action raises issues directly implicating the legality of his confinement. See Jackson v. Torres, 720 F.2d 877, 879 (5th Cir. 1983). As Holley has not alleged an invalidation of his conviction, this court could dismiss his claims for damages under Heck.

However, because absolute immunity is properly viewed as immunity from suit rather than a mere defense to liability, the court may resolve the question of absolute immunity before reaching a Heck analysis. Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994). Members of the parole board are absolutely immune from liability under § 1983 for their conduct in individual parole decisions when exercising their decision-making powers. Walter v. Torres, 917 F.2d 1379, 1384 (5th Cir. 1990). Therefore, the district court's judgment is affirmed on the alternative ground that Holley did not state a claim against Griffin, Wilson-Nules, and Rideaux under Heck, and against Wilson-Nules, for the additional reason that a board member of

the Texas Board of Pardons and Paroles is absolutely immune from suit. Holley's motion for appointment of counsel is DENIED as unnecessary.

AFFIRMED.