

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11006
Conference Calendar

EMANUEL VINCENT THOMAS,

Plaintiff-Appellant,

versus

MARY SCHERER, Officer, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:94-CV-649-Y

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(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Emanuel Vincent Thomas filed a civil rights action against Mary Scherer, the preliminary hearing officer in his parole revocation proceeding, and Eva Wilson Craddock, his parole officer. He alleged that Scherer and Craddock violated his rights to due process in recommending that his parole be revoked because a panel consisting of three members did not vote to revoke his parole, the hearing officer was unqualified to conduct a revocation hearing because the officer permitted hearsay testimony and relied on the testimony in her decision to revoke

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

parole, and his parole revocation was based on felony charges that were later dismissed.

Thomas argues that the district court erred in classifying his case as an application for habeas corpus and dismissing it for failure to exhaust state remedies. 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 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 (1994). Thomas has not pursued his habeas corpus remedies; however, we resolve the question of absolute immunity before reaching a Heck analysis because absolute immunity is properly viewed as immunity from suit rather than a mere defense to liability. Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994).

Thomas received a preliminary hearing as part of his parole revocation proceeding to determine probable cause to detain him pending the decision whether to revoke. See Ex parte Nelson, 815 S.W. 2d 738, 738-39 (Tex. Crim. App. 1991) (citing 37 Tex. Admin. Code §§ 145.46 and 145.50 (Supp. 1991)); see also Morrissey v. Brewer, 408 U.S. 471, 485 (1972) (due process requires that a preliminary hearing be held "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions"). In her capacity as the hearing officer,

Scherer participated in the quasi-judicial activity of revoking parole, affording her absolute immunity from damages. See Walter v. Torres, 917 F.2d 1379, 1383 (5th Cir. 1990). Craddock, Thomas' probation officer, is also absolutely immune from suit. "[W]hen a prosecutor or probation officer provides information relevant to sentencing or recommends a sentence, they are clearly performing prosecutorial or quasi-judicial acts." Johnson v. Kegans, 870 F.2d 992, 997 (5th Cir.), cert. denied, 492 U.S. 921 (1989); see Walter, 917 F.2d at 1383.

Thomas argues that the Texas Board of Pardons and Paroles did not follow proper procedure in revoking his parole. Thomas did not name the Board members as defendants in his complaint and the nature of his allegations of improper procedures is unclear. However, Thomas' allegations concern the Board members' decision to revoke his parole and not their administrative functions. See Walter, 917 F.2d at 1384. Therefore, it is not necessary to remand to the district court to permit Thomas to amend his complaint because the members of the Board are absolutely immune from suit in performing their adjudicative function in individual parole decisions. Id.

To the extent that Thomas seeks equitable relief, his claim also fails. The gravamen of Thomas' complaint is that his parole was revoked in violation of due process, which calls into question the fact of his confinement. The relief that he seeks is release on appeal, and his remedy lies in a petition for habeas corpus. See Heck, 114 S. Ct. at 2372.

AFFIRMED.