

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11041
Conference Calendar

JAMES EARL AUSTIN,

Plaintiff-Appellant,

versus

WICHITA FALLS POLICE DEPT., ET AL.,

Defendants,

DINNIS RIGGINS, Police Officer
for Wichita Falls, TX Police
Department, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:93-CV-162-X
- - - - -

March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

James Earl Austin, a prisoner in the Wichita County Jail, filed a civil rights under 42 U.S.C. § 1983 against the Wichita Falls Police Department, Police Officer Dinnis Riggins, and Mark Ball of the Texas Department of Public Safety. Austin alleged that he was falsely arrested and convicted on a charge of delivery of a simulated controlled substance. Austin asserted

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that he did not commit any crime and that he is being confined unlawfully and illegally.

Under Heck v. Humphrey, 114 S. Ct. 2364, 2372 (1994), a claim alleging "harm caused by actions whose unlawfulness would render a conviction or sentence invalid" cannot be brought under § 1983 unless that "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 in to question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254."

In this case, there is no doubt that a judgment in favor of Austin would necessarily imply the invalidity of his conviction. Austin has not shown that his conviction has been invalidated, therefore his claims are not cognizable under § 1983 at this time. See Heck, 114 S. Ct. at 2372; Stephenson v. Reno, 28 F.3d 26, 27-28 (5th Cir. 1994).

AFFIRMED.