

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11058
Conference Calendar

RUDOLFO TREVINO,

Plaintiff-Appellant,

versus

TOM BARTON and
TOMMY HOBBS,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:94-CV-245-C

- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Rudolfo Trevino, a Texas state prisoner proceeding pro se and in forma pauperis, appeals the dismissal pursuant to 28 U.S.C. § 1915(d) of his civil rights suit against Tom Barton and Tommy Hobbs, Texas parole officers. The district court reasoned that Trevino needed to pursue state habeas remedies prior to pursuing his § 1983 claims. To the extent that his claims are habeas claims, he must pursue state remedies prior to bringing

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

those habeas claims in federal court. Johnson v. Pfeiffer, 821 F.2d 1120, 1123 (5th Cir. 1987).

The Supreme Court has recently held, however, 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 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, 114 S. Ct. 2364, 2372 (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. Trevino'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 Trevino has not alleged an invalidation of a conviction, sentence, or continued confinement, we affirm the district court's dismissal of Trevino's claims for damages on the ground that the claims have not yet accrued under Heck.

AFFIRMED.