IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30182
Conference Calendar

NIGEL JACKSON,

Plaintiff-Appellant,

versus

JUDGE ROY B. TUCK ET AL,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-94-8
- - - - - - - - - - - - -
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:[*]

In support of his motion for leave to appeal in forma pauperis (IFP) the district court's denial of his civil rights complaint brought under 42 U.S.C. § 1983, Nigel Jackson argues that La. Rev. Stat. Ann. § 15:571.5 (West 1993) is unconstitutional. His claim is not yet ripe, and even if it were, it would need to be successfully asserted in a writ of habeas corpus prior to asserting it in a § 1983 action.

A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

statute's operation or enforcement. Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 297-98, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979). Persons with "imaginary" or "speculative" fears are not to be accepted as appropriate plaintiffs. Id. at 298.

Jackson asserts that he should be entitled to no parole supervision if released early based on good behavior. Jackson, however, has not been released early based on good behavior. He has also failed to show that he will be released early based on good behavior or that he has earned diminution of sentence based on good behavior. In effect, Jackson is complaining of a speculative fear. His suit, therefore, is not ripe for review.

The district court dismissed the suit for failure to exhaust habeas remedies. That reasoning, assuming ripeness, has been cast into doubt by Heck v. Humphrey, ___ S.Ct. ___ (U.S. June 24, 1994, No. 93-6188), 1994 WL 276683 at *5 (holding that a cause of action for § 1983 purposes does not accrue, inter alia, until after successfully pursuing habeas remedies). However, we need not address the implications of Heck for this case because the issue is not ripe.

Jackson has also filed a motion for leave to consolidate his case with Broussard v. Edwards, et al, in which we affirmed the dismissal of that lawsuit and also denied Broussard's motion to consolidate his appeal with, inter alia, this case. Broussard v. Edwards, et al., No. 94-30115 (5th Cir. May 17, 1994). Thus, Jackson's motion to consolidate his appeal is DENIED as moot.

LEAVE TO APPEAL _IN FORMA PAUPERIS_ AND LEAVE TO CONSOLIDATE DENIED; APPEAL DISMISSED.