

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40115
Summary Calendar

FREDERICK LOUIS PUGH,
a/k/a
Kariym Abdullah Muhammad,

Plaintiff-Appellant,

versus

THE BOARD OF CRIMINAL JUSTICE ET AL,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:93-CV-733
- - - - -
(August 29, 1994)

Before KING, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Frederick Louis Pugh, a/k/a Kariym Abdullah H. Muhammad, seeks leave to proceed in forma pauperis (IFP) from the 28 U.S.C. § 1915(d) denial as frivolous of his 42 U.S.C. § 1983 action. We may authorize Pugh to proceed IFP on appeal if he is unable to pay the costs of the appeal and the appeal is taken in good faith, i.e., the appeal presents nonfrivolous issues. 28 U.S.C. § 1915(a); Coppedge v. U.S., 369 U.S. 438, 446, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Pugh's action resulted from his dissatisfaction with his appointed representation during criminal proceedings brought against him in state court for actions he committed while he was in prison. His complaint is clearly a challenge to the fact or length of his confinement. The district court dismissed the action against seven of the nine named defendants with prejudice. The complaint against two defendants -- Charles T. Terrell and Jerry H. Hodge -- was dismissed without prejudice so that Pugh could exhaust his habeas remedies.

In Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994), the Supreme Court held that, in order to recover damages for an allegedly unconstitutional conviction, or for "harm caused by actions whose unlawfulness would render a conviction or sentence invalid," a prisoner must show that the 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 into question by a federal court's issuance of a writ of habeas corpus."

As Pugh's complaint represents a challenge to the fact or length of his confinement, Heck applies and, under Heck, the case was subject to dismissal because Pugh has not established that his conviction "has been declared invalid or otherwise impugned." Stephenson v. Reno, ___ F.3d ___ (5th Cir. Aug. 8, 1994, No. 94-30080), slip op. at 5576.

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Pugh has not presented a nonfrivolous issue. His motion seeking leave to appeal IFP is DENIED, and his appeal is DISMISSED. See 5th Cir. R. 42.2.