

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-40625  
Summary Calendar

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JOHNNY LOGAN HICKS,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS, Director,  
Texas Department of Criminal Justice,  
Institutional Division, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:94-CV-193)

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(November 7, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Hicks appeals the dismissal of his § 1983 action seeking damages for the loss of prison "good-time" credits. We conclude that Hicks' claim is not cognizable under § 1983 and affirm.

I.

Johnny Logan Hicks, an inmate in the Texas state prison system, was found guilty of violating prison rules in a September, 1993 disciplinary hearing and sentenced to the loss of 730 days of

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<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

good-time credit. At the time of Hicks' disciplinary hearing, a Texas Department of Criminal Justice ("TDCJ") policy apparently provided that forfeited good-time credit would be restored if an inmate remained free of discipline for a period of ninety days. The TDCJ subsequently changed this policy in November, 1993, and prohibited the practice of restoring forfeited good-time credits. Based on the new policy, a prison classification committee rejected Hicks' request to restore his forfeited credits even though he had remained free of discipline for ninety days.

Hicks subsequently filed a civil rights action pursuant to 42 U.S.C. § 1983 seeking monetary damages for the loss of his good-time credits. Hicks' claim centers on his contention that the TDCJ's policy change is an unconstitutional ex post facto measure. A magistrate judge recommended that the action be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d). The district court accepted the recommendation of the magistrate judge and dismissed the action as frivolous. Hicks filed a timely notice of appeal.

## II.

We need not decide whether the TDCJ's policy change is an unconstitutional ex post facto measure because Hicks' claim is not cognizable under § 1983. In **Heck v. Humphrey**, \_\_\_ U.S. \_\_\_, 114 S. Ct. 2364, 2372 (1994), the Supreme Court held that in order to recover damages for allegedly unconstitutional convictions or sentences, § 1983 plaintiffs must prove that their convictions or sentences have 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." Whether **Heck** bars a claim under § 1983 turns on "whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." **Id.** If so, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." **Id.**

Hicks' claim falls squarely within the Court's holding in **Heck**. Hicks' damage claim seeks monetary damages for the deprivation of good time credits and directly calls into question the lawfulness of his confinement. Because the permanent deprivation of his good-time credits essentially increases Hicks' sentence by two years, a judgment in his favor would necessarily imply that his increased sentence is invalid. **Heck**, 114 S.Ct. at 2372. Yet, Hicks fails to show that he has successfully challenged his confinement or sentence in any other proceeding. Hicks offers no proof that the disciplinary action resulting in the forfeiture of his good-time credits has been reversed, expunged, set aside by a state court, or called into question by a federal court's issuance of a writ of habeas corpus. Nor does Hicks allege that he has successfully challenged the prison system's refusal to restore the forfeited credits. Therefore, Hicks' claim is not cognizable under § 1983 at this time. Hicks' sole federal remedy to challenge the fact or duration of his confinement is a writ of habeas corpus. **Preiser v. Rodriguez**, 411 U.S. 475, 500 (1973).

AFFIRMED.