

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50416
Conference Calendar

LEROY RUSSELL, JR.,

Plaintiff-Appellant,

versus

MARK LUITJEN, District Attorney,
and HARLON COPELAND, Sheriff,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-94-CV-276
- - - - -
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

On April 1, 1994, Leroy Russell, Jr., a Texas prisoner, commenced this 42 U.S.C. § 1983 action against Mark Luitjen, an assistant district attorney for Bexar County, Texas, and Harlon Copeland, former Bexar County Sheriff. Russell alleged that he was deprived of due process when Copeland inadvertently transferred him from county jail to state prison on April 17, 1991, before final disposition of pending charges in cause numbers 89-CR-1784, robbery, and 89-CR-1785, possession of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

cocaine. Russell alleged that Luitjen deprived him of due process by failing to complete the prosecution of the pending charges in a timely manner, thereby causing his inadvertent transfer to state prison. Russell sought damages from each defendant and a court order setting aside his convictions.

The district court dismissed the complaint as frivolous under 28 U.S.C. § 1915(d), concluding the claims were barred by the two-year Texas statute of limitations. We affirm, but on different grounds.

The Supreme Court's recent decision in Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), precludes Russell's claims. Heck requires courts 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. at 2372.

Russell's complaint implicates the validity of his convictions and sentences. Russell conceded in response to a questionnaire from the magistrate judge that he had never appealed his convictions or sentences or sought state or federal habeas relief from them. Therefore, because Russell cannot show that the convictions or sentences have already been set aside, as required by Heck, he cannot maintain this § 1983 action.

AFFIRMED.