

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60548  
Summary Calendar

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JAMES BERNARD LAWSON

Plaintiff-Appellant,

v.

CYNTHIA SPEETJENS, JAMES DAVIS,  
Investigator, JUDY J. LOWERY and  
THOMAS FORTNER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
(3:94-CV-89-LN)

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(December 6, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Appellant James Bernard Lawson appeals from the district court's dismissal of his *in forma pauperis* § 1983 complaint on "frivolous" grounds. We affirm as to two defendants based upon the doctrine of absolute immunity, and we affirm as to the remaining

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

defendants based upon the Supreme Court's decision in Heck v. Humphrey and upon our own decision in Boyd v. Biggers.

#### **I. FACTUAL AND PROCEDURAL BACKGROUND**

Mississippi prisoner James Bernard Lawson files this action pursuant to 42 U.S.C. § 1983 against Cynthia Speetjens, Assistant District Attorney for Hinds County, Mississippi; James Davis, Investigator at the Hinds County Detention Center, Jackson, Mississippi; Judy J. Lowery, foreperson of a grand jury for the circuit court of Hinds County; and Thomas Fortner, public defender. Lawson initially sought monetary damages, although on appeal, he seeks release from confinement as well.

On March 2, 1993, Lawson was arrested for armed robbery. He was indicted and ultimately convicted of armed robbery by a jury. In this appeal, he alleges that his arrest, indictment, and conviction occurred as the result of a conspiracy among the defendants to have him incarcerated. To support these allegations, Lawson contends that investigator Davis arrested him without a search warrant or an arrest warrant. Moreover, Lawson alleges that Davis did not produce a warrant even after testifying that he did possess a warrant for Lawson's arrest. According to Lawson, defendant Lowery -- the foreperson of the grand jury -- improperly returned an indictment against Lawson for armed robbery as a habitual offender, even though the evidence before the grand jury was insufficient to support a habitual offender indictment. As to Fortner and Speetjens, Lawson contends that they were in "constant dialogue" during his trial, with Speetjens influencing the

testimony of her witnesses by speaking to them during the trial proceedings. Finally, Lawson alleges that Fortner provided him with ineffective assistance of counsel, refusing to file motions for relief, and failing to aggressively argue on behalf of Lawson.

The district court dismissed Lawson's claims as frivolous. The court construed Lawson's allegations as "plac[ing] in issue the fact of his confinement." Thus, the court found that Lawson's contentions should have initially been raised in a petition for habeas corpus relief, and should have satisfied the accompanying exhaustion requirement. Lawson's claims against Speetjens and Lowery were dismissed with prejudice on the grounds of absolute immunity. Lawson's conspiracy claim against Fortner was also dismissed with prejudice because Lawson was not a state actor for § 1983 purposes. Lawson's other claims against Fortner and Davis were dismissed without prejudice for failure to exhaust state-law remedies. Lawson appeals from the district court's judgment, essentially reasserting the prior conspiracy theory along with its accompanying grounds.

## II. STANDARD OF REVIEW

Dismissal of an *in forma pauperis* complaint is appropriate if the district court determines that it is frivolous, i.e., that "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). A complaint is legally frivolous under 28 U.S.C. § 1915(d)<sup>1</sup> if it is premised on an

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<sup>1</sup> The statute provides that "[t]he court may request an attorney to represent any such person unable to employ counsel

"indisputably meritless legal theory." Id. at 327. We review a district court's § 1915(d) dismissal using an abuse of discretion standard. Denton v. Hernandez, 112 S. Ct. 1728, 1734 (1992).

### III. ANALYSIS AND DISCUSSION

#### A. Heck v. Humphrey

In Heck v. Humphrey, 114 S. Ct. 2364, 2370 (1994), the Supreme Court adhered to its "teaching that § 1983 contains no exhaustion requirement beyond what Congress has provided." Nevertheless, the Court concluded that:

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must provide 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, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Id. at 2372 (footnote omitted). As the Court later noted:

We do not engraft an exhaustion requirement upon § 1983, but rather deny the existence of a cause of action. Even a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus. . . . *[A] § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.*

Id. at 2373-74 (emphasis added).

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and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d).

Although the Heck Court rejected our prior approach to this area *in form*, the analysis required by Heck *in substance* "is similar in certain respects to the analysis we have long used in this circuit when a state prisoner brings a § 1983 action in federal district court." Boyd v. Biggers, 31 F.3d 279, 283 (5th Cir. 1994). As we stated in Boyd:

Under Heck, when a state prisoner brings a § 1983 action seeking damages, the trial court must first ascertain *whether a judgment in favor of the plaintiff in the § 1983 action would necessarily imply the invalidity of his conviction or sentence*. If it would, the prisoner must show that his conviction has been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus" in order to state a claim.

Id. at 283 (emphasis added) (citations omitted).

Lawson's conviction and sentence have yet to be invalidated. Thus, we proceed to evaluate the claims raised in his § 1983 action to determine whether they challenge the validity of his conviction or sentence. We conclude that they do; however, for reasons that will be explained in Part III(B), we limit our Heck discussion to the dismissal of Lawson's claims against Davis and Fortner.

Some of Lawson's allegations amount to claims of ineffective assistance of counsel. If proved, these claims would call Boyd's conviction into question under cases such as Strickland v. Washington, 466 U.S. 668 (1984). See Boyd, 31 F.3d at 283; Stephenson v. Reno, 28 F.3d 26, 27 (5th Cir. 1994) ("[The] civil rights action does constitute a challenge to the fact or length of his confinement. In particular, his action alleges that . . . his court-appointed counsel rendered ineffective assistance . . . .").

Liberally construed, Lawson's complaint also alleges that Fortner and investigator Davis violated Lawson's rights by conspiring to incarcerate him. See Stephenson, 28 F.3d at 27 ("[The] civil rights action does constitute a challenge to the fact or length of his confinement. In particular, his action alleges that . . . the named defendants conspired to violate his constitutional rights . . ."); Young v. Biggers, 938 F.2d 565, 566-67 (5th Cir. 1991) (addressing a § 1983 lawsuit premised on a conspiracy among law enforcement officials in violation of the Fourteenth Amendment). If proved, these conspiracy claims would also call his conviction into question. Indeed, Lawson himself asks this court for "immediate release," and Lawson notes that Fortner "*collectively* joined in an ongoing conspiracy until finally prevailing in the *unconstitutional conviction* of plaintiff" (emphasis added). We conclude that all of Lawson's claims -- the conspiracy claims against Fortner<sup>2</sup> and Davis,<sup>3</sup> and the ineffective

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<sup>2</sup> The district court concluded that Fortner was not a state actor, and therefore, the court dismissed the Fourteenth Amendment conspiracy claim against him. If a public defender has conspired with a state actor to deprive a person of his constitutional rights, however, a public defender may be liable under 42 U.S.C. § 1983. See Tower v. Glover, 467 U.S. 914, 920 (1984). The district court concluded that Lawson had not pleaded sufficient facts to raise a claim of conspiracy with a state actor. We disagree, as Lawson specifically alleged that public defender Fortner and state prosecutor Speetjens worked together to help convict Lawson. Nevertheless, the claim of conspiracy falls within the ambit of Heck, and as such, we affirm the district court's dismissal of the claim, although we do so on different grounds.

<sup>3</sup> Lawson does not explicitly contend that his allegedly warrantless arrest undermines the validity of his conviction. See Gerstein v. Pugh, 420 U.S. 103, 119 (1975) ("[I]llegal arrest or detention does not void a subsequent conviction."). Lawson

assistance of counsel claim against Fortner -- come within the ambit of *Heck* and are properly dismissed as frivolous.

### **B. Absolute Immunity**

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does contend, however, that the arrest was a major component in the conspiracy that led to his alleged "unconstitutional conviction." Thus, we construe Lawson's warrantless arrest allegations as part of, and an essential element of, Lawson's Fourteenth Amendment conspiracy claim. A judgment for Lawson on this conspiracy claim in a § 1983 action would necessarily imply the invalidity of his conviction; thus, the Heck analysis is applicable.

Our conclusion is strengthened by the district court's statement that all of Lawson's claims, including his warrantless arrest claim, "place in issue the fact of his confinement." Implicitly, therefore, the district court construed the warrantless arrest allegations as part and parcel of Lawson's conspiracy claim. Lawson never disputes this characterization; in fact, on appeal, he supports it by asking for "immediate release" and by claiming an "unconstitutional conviction." In Heck, the Supreme Court faced a similar situation:

Neither in his petition for certiorari nor in his principal brief on the merits did petitioner contest the description of his monetary claims (by both the District Court and the Court of Appeals) as challenging the legality of his conviction. Thus, the question we understood to be before us was whether money damages *premised on an unlawful conviction* could be pursued under § 1983. Petitioner sought to challenge this premise in his reply brief, contending that findings validating his damages claims would not invalidate his conviction. That argument comes too late. We did not take this case to review such a *fact-bound issue*, and we accept the characterization of the lower courts.

Heck, 114 S. Ct. at 2368-69 n.2 (emphasis added) (citation omitted). In our case, Lawson has yet to take issue with the district court's characterization of his warrantless arrest allegations as an element of his broader conspiracy claim, and therefore, as a challenge to his confinement. Indeed, as mentioned, Lawson's statements on appeal serve to support the accuracy of this characterization. We believe, therefore, that the warrantless arrest claim, properly construed as an integral part of Lawson's conspiracy claim, does challenge the validity of Lawson's conviction and confinement. As such, it falls within Heck and is properly dismissed.

In Boyd, we noted that absolute immunity was a threshold question that should be resolved, when feasible, before reaching the Heck analysis. See 31 F.3d at 284. We conclude that prosecutor Speetjens and grand jury foreperson Lowery are both entitled to absolute immunity from all of Lawson's claims.

Criminal prosecutors "enjoy absolute immunity from claims for damages asserted under § 1983 for actions taken in the presentation of the state's case." Id. at 285. Prosecutorial immunity "applies to the prosecutor's actions in initiating the prosecution and in carrying the case through the judicial process." Id. The immunity applies "even if the prosecutor is accused of knowingly using perjured testimony." Id. Lawson alleges no facts to establish that Speetjens was performing acts other than those directly related to her presentation of the criminal case. Thus, Speetjens' absolute immunity is intact, and Lawson's claims against her were properly dismissed with prejudice.

Grand jurors are also entitled to absolute immunity. See, e.g., Marrero v. City of Hialeah, 625 F.2d 499, 507 (5th Cir. 1980) ("The prosecutor's immunity is derived from *the absolute immunity accorded judges and grand jurors*, an immunity necessitated by the concern that these actors in the judicial process . . . would be intimidated in the exercise of their discretion by the fear of retaliatory lawsuits brought by angry defendants.") (emphasis added). Lawson contends that Lowery should not have signed the indictment that charged him as a habitual offender. The decision that Lawson should be prosecuted as a habitual offender, however,



is clearly within the scope of the duties of the grand jury. Thus, Lowery is entitled to absolute immunity, and Lawson's claims against her were properly dismissed with prejudice.

#### **IV. CONCLUSION**

For the foregoing reasons, the district court's dismissal of Lawson's various § 1983 claims is AFFIRMED.