

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50123  
Conference Calendar

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EUGENE SPENCER, JR.,

Plaintiff-Appellant,

versus

CHARLES T. CONAWAY ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-95-CV-967  
- - - - -

June 25, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Eugene Spencer, Jr., Texas inmate #245350, appeals the district court's dismissal, with prejudice, of his civil rights complaint as frivolous. We have reviewed the record, the district court's opinion, and appellant's brief and discern no reversible error.

"[C]ivil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments."

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Heck v. Humphrey, 114 S. Ct. 2364, 2372 (1994). In order to recover damages for harm caused by actions whose unlawfulness would render a conviction or sentence invalid, the "plaintiff must prove 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." Id. Spencer's claims call into question the validity of his conviction and sentence and may not be considered in a civil rights action under the rule in Heck because Spencer has not demonstrated that his conviction and sentence have been invalidated.

This appeal is frivolous and therefore is DISMISSED. See 5th Cir. R. 42.2. We caution Spencer than any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Spencer is further cautioned to review all pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED. SANCTION WARNING ISSUED.