

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60226
Summary Calendar

RONALD EMERY JONES,

Plaintiff - Appellant,

versus

KIRK FORDICE; MICHAEL MOORE;
EDDIE LUCAS, Commissioner,
Mississippi Department of Corrections;
EDWARD HARGETT, Superintendent,
Mississippi State Penitentiary;
LAWRENCE HENDERSON,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(4:94-CV-235-B-B)

August 14, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Ronald Emery Jones, No. 80661, a Mississippi state prisoner, appeals the dismissal with prejudice of his 42 U.S.C. § 1983 action as frivolous. Jones maintains that his incarceration prior to the determination of his direct appeal was unconstitutional. This

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

claim necessarily raises the invalidity of his conviction, which Jones cannot establish and is, therefore, not cognizable under § 1983. *Heck v. Humphrey*, __ U.S.__, 114 S.Ct. 2364, 2372 (1994).

Jones' contention that the district court was required to conduct an evidentiary hearing before modifying the magistrate judge's report in order to add additional findings is without merit. The district court may accept, reject, or modify, in whole or in part, the findings made by the magistrate judge. See *Archie v. Christian*, 808 F.2d 1132, 1135 (5th Cir. 1987) (en banc).

Jones asserts also that the delay of over two years in adjudicating his direct appeal is in itself violative of due process, and he seeks damages. His inability to demonstrate any prejudice resulting from the delay undermines any such claim. See, e.g. *United States v. Bermea*, 30 F.3d 1539, 1569 (5th Cir. 1994), cert. denied, __ U.S. __, 115 S. Ct. 1113 (1995).

Jones' motion to supplement his appellate brief is **DENIED**, and the judgment is

AFFIRMED.