

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10779
Conference Calendar

BUCK RICHARD CROWDER,

Plaintiff-Appellant,

versus

JOHNNY H. JACKSON;
WILLIAM L. SMITH,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:96-CV-160-T
- - - - -

August 19, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Buck Richard Crowder, Texas inmate #426609, appeals the dismissal, with prejudice, for frivolousness of his civil rights complaint.

He argues that his complaint should have been held in abeyance as he seeks habeas relief. Under Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), there is no cause of action to hold in abeyance because the cause of action has yet to arise.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Dismissing the case was proper. See Boyd v. Biggers, 31 F.3d 279, 282-83 (5th Cir. 1994).

Crowder argues that defendant Jackson would not be entitled to prosecutorial immunity and defendant Smith is either an actor under color of state law or is a private actor who conspired with a state actor. Crowder's arguments are without merit. See Boyd, 31 F.3d at 285; Hudson v. Hughes, 98 F.3d 868, 873 (5th Cir. 1996); Hale v. Harney, 786 F.2d 688, 690 (5th Cir. 1986).

The district court did not abuse its discretion in dismissing the complaint as frivolous. See McCormick v. Stalder, 105 F.3d 1059, 1061 (5th Cir. 1997).

This appeal is without arguable merit and is thus frivolous. See 5TH CIR. R. 42.2. It is DISMISSED. Additionally, Crowder is warned that future frivolous appeals will invite the imposition of sanctions. Crowder should review any pending appeals to ensure that they do not raise frivolous arguments.

APPEAL DISMISSED; SANCTION WARNING ISSUED.