

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20097
Conference Calendar

DOMINGO GARCIA,
Plaintiff-Appellant,
versus
MARY J. HARMON ET AL.,
Defendants-Appellees.

* * * * *

DOMINGO GARCIA,
Plaintiff-Appellant,
versus
MARY J. HARMON,
Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC Nos. H-96-CV-2542
H-96-CV-2686
- - - - -

October 20, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Domingo Garcia, federal prisoner # 661-89-079, appeals the dismissal as frivolous of his consolidated civil rights actions under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). A federal prisoner's Bivens

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

action is subject to the rule of Heck v. Humphrey, 512 U.S. 477, 489 (1994), that a prisoner challenging the fact or length of his confinement must challenge successfully the conviction or sentence, or otherwise indicate that the conviction or sentence has been declared invalid, before a possible civil rights cause of action arises. Stephenson v. Reno, 28 F.3d 26, 27-28 (5th Cir. 1994).

On appeal, Garcia asserts that he is not challenging the validity of his conviction, but in his original complaint he contended that he had been falsely incarcerated by "selective prosecution". It is not possible to award Garcia monetary damages for wrongful prosecution, but allow him to remain incarcerated in violation of his constitutional rights. Garcia does not assert that his conviction has been invalidated. This appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.4.

Garcia is cautioned that any future frivolous appeals or pleadings filed by him or on his behalf will invite the imposition of sanctions. Garcia should therefore review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.