

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50496
Conference Calendar

SOLOMON G. WATT,

Plaintiff-Appellant,

versus

VICTOR RODRIGUEZ, Chairman of Texas
Board of Pardons and Parole;
GARY L. JOHNSON, Director, Texas Department
of Criminal Justice, Institutional Division,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-99-CV-42-F
- - - - -

October 20, 1999

Before JONES, WIENER, and STEWART, Circuit Judges.

PER CURIAM:*

Solomon G. Watt, Texas prisoner # 460844, appeals the district court's dismissal as frivolous of his 42 U.S.C. § 1983 suit. On appeal, Watt contends that he is unconstitutionally imprisoned beyond the maximum sentence imposed by the trial court. He seeks monetary damages and attorney's fees.

Watt's suit is not cognizable under § 1983. See *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). To recover damages for an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

allegedly unconstitutional conviction or imprisonment, or for harms caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must first 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.* Watt has neither alleged nor proven that his imprisonment has been invalidated. Accordingly, the district court's order dismissing Watt's suit as frivolous pursuant to 28 U.S.C. § 1915(e) is AFFIRMED.

The district court's dismissal counts as a strike against Watt. *See Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996) (affirmance of district court's dismissal as frivolous counts as a single strike). Watt is cautioned that if he accumulates three strikes, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

AFFIRMED; SANCTION WARNING ISSUED