

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 17, 2011

Lyle W. Cayce
Clerk

No. 10-60244
Summary Calendar

DONOVAN JOHNSON,

Plaintiff-Appellant

v.

KOSCIUSKO POLICE DEPARTMENT; R.J. ADAMS, Chief of Police,

Defendants-Appellees

Appeals from the United States District Court
for the Northern District of Mississippi
USDC No. 1:09-CV-169

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Donovan Johnson, Mississippi prisoner # K8179, appeals the summary judgment dismissal of his § 1983 complaint alleging that his Fourth Amendment rights were violated when police searched his home on January 23, 2008, without his permission or a search warrant.

For the first time on appeal, Johnson asserts claims based upon ineffective assistance of counsel as well as violations of his equal protection rights, his Fifth Amendment rights, and several provisions of Mississippi law. This court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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declines to consider these claims. *See Jennings v. Owens*, 602 F.3d 652, 657 n.7 (5th Cir. 2010).

Johnson does not challenge the district court's holding that, to the extent that he attempts to prove an alibi for the time during which he was convicted of selling cocaine, it is barred under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Accordingly, he has waived any challenge to that holding. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

With regard to the dismissal of his substantive claim that no search warrant had been issued, we affirm on the alternative ground that this claim, too, is barred by *Heck* because, by Johnson's own admissions, it necessarily challenges the validity of the convictions for which he is currently incarcerated. *See Heck*, 512 U.S. at 486-87; *United States v. McSween*, 53 F.3d 684, 687 n.3 (5th Cir. 1995). Johnson's motion for appointment is denied.

AFFIRMED; MOTION DENIED.