

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 12, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

J.D. HOOPER,

Plaintiff - Appellant,

v.

JOHN KEVIN STITT, Governor, State of
Oklahoma,

Defendant - Appellee.

No. 23-6049
(D.C. No. 5:22-CV-00988-D)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ**, and **PHILLIPS**, Circuit Judges.

J.D. Hooper, an Oklahoma state prisoner, appeals the district court’s dismissal of his claim under 42 U.S.C. § 1983 seeking the invalidation of his conviction and immediate release. We affirm.

BACKGROUND

In 2013, a jury found Mr. Hooper guilty of three counts of first-degree rape and three counts of sodomy. The Oklahoma Court of Criminal Appeals affirmed his

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

conviction. In 2020, the United States Supreme Court held in *McGirt v. Oklahoma* that large portions of eastern Oklahoma were part of the Creek Indian Reservation and, under the Major Crimes Act, subject to exclusive federal jurisdiction for crimes committed by Native Americans on those lands. *See* 140 S. Ct. 2452, 2459–82 (2020). Mr. Hooper thereafter filed a post-conviction challenge to his conviction in Oklahoma state court. The court initially granted his motion but, months later, granted the State’s motion to vacate the grant of post-conviction relief and reinstated the original conviction and sentence.

Mr. Hooper then brought this action in the Western District of Oklahoma. He filed a one-count complaint under § 1983, seeking a declaration that his conviction was invalid and injunctive relief ordering his release. A magistrate judge screened the complaint under 28 U.S.C. § 1915A and recommended dismissal for failure to state a claim. The magistrate judge concluded Mr. Hooper could not bring his claim under § 1983 (rather than through a federal or state habeas petition) because his claim challenged the fact and duration of his confinement. The district court adopted the recommendation in full and dismissed the complaint. This appeal followed.

DISCUSSION

“Dismissal for failure to state a claim is a legal question we review de novo.” *Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009). We therefore “must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *Id.* (internal quotation marks omitted).

Mr. Hooper devotes the majority of his opening brief to his argument that Oklahoma lacked jurisdiction to prosecute him for his crimes. *See* Aplt. Opening Br. at 6–25. But we do not reach that portion of his argument because the portion of his opening brief related to the propriety of a § 1983 action under these circumstances is indisputably meritless. “[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement. He must seek federal habeas corpus relief (or appropriate state relief) instead.” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (internal quotation marks and citations omitted); *see also id.* at 81–82 (reviewing several Supreme Court cases and concluding that, “taken together, [they] indicate that a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration”); *Boutwell v. Keating*, 399 F.3d 1203, 1209 (10th Cir. 2005) (“A prisoner may use § 1983 to challenge the *conditions* of his confinement, but habeas corpus is the only avenue for a challenge to the *fact* or *duration* of confinement, at least when the remedy requested would result in the prisoner’s immediate or speedier release from that confinement.” (citing *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973))); *Reed v. McKune*, 298 F.3d 946, 953 (10th Cir. 2002) (“[W]ith respect to [Plaintiff’s] request for an injunction that would effect his immediate or imminent release on parole, his claim is not cognizable under § 1983 and must instead be brought under 28 U.S.C. § 2241.”)

Mr. Hooper here sought to use a § 1983 action—not a habeas petition—to challenge the fact of his confinement, so the district court correctly dismissed his claim.

Mr. Hooper argues the line of precedent invoked in *Wilkinson* does not apply because he is arguing his state judgment was void ab initio for want of jurisdiction. But he points to no authority permitting a § 1983 action under these circumstances. His assertion that the state judgment was void ab initio relates to the merits of his underlying claim, which directly “challenge[s] the fact or duration of his confinement,” *Wilkinson*, 544 U.S. at 78 (internal quotation marks omitted), so he cannot bring it under § 1983. Mr. Hooper likewise argues the basis for the district court’s dismissal was non-jurisdictional, but even if so, the court still properly dismissed his complaint for failure to state a claim.

CONCLUSION

We affirm the district court’s order.

Entered for the Court

Gregory A. Phillips
Circuit Judge