

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

United States Court of Appeals
Fifth Circuit

FILED

January 26, 2010

Charles R. Fulbruge III
Clerk

No. 09-50639

Summary Calendar

ANTHONY RAY JOHNSON,

Plaintiff-Appellant

v.

TEXAS BOARD OF PARDONS AND PAROLES,

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:08-CV-823

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Anthony Ray Johnson sued the Texas Board of Pardons and Paroles under 42 U.S.C. § 1983 seeking damages for the revocation of his parole. The district court dismissed the suit as frivolous because the Board is immune from suit under the Eleventh Amendment and because Johnson did not assert that the Board's decision was reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus as required by *Heck v. Humphrey*, 512 U.S.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

477, 486-87 (1994). The court denied leave to proceed in forma pauperis (IFP) on appeal and certified that the appeal was not taken in good faith.

Johnson seeks this court's leave to proceed IFP. He asserts that he is entitled to damages because a jury acquitted him of the offense that formed the basis of the Board's revocation decision. The district court correctly determined that his suit is barred by the Eleventh Amendment and *Heck*. See *McGrew v. Tex. Bd. of Pardons & Paroles*, 47 F.3d 158, 161 (5th Cir. 1995). Because Johnson fails to show that he will raise a nonfrivolous issue on appeal, the outstanding motions are DENIED, and the appeal is DISMISSED as frivolous. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 5th Cir. R. 42.2.