

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 12a0481n.06

Nos. 09-2590/10-1646

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
May 08, 2012
LEONARD GREEN, Clerk

ANTHONY G. HUNT,)
)
Plaintiff-Appellant,)
)
v.)
)
STATE OF MICHIGAN; JOHN DOE,)
unknown defendants of City of Detroit, State)
of Michigan, and Wayne County, in their)
official capacities,)
)
Defendants-Appellees.)
)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF MICHIGAN

BEFORE: SUTTON, McKEAGUE, and RIPPLE,* Circuit Judges.

PER CURIAM. Anthony G. Hunt, a Michigan state prisoner, appeals a district court order dismissing his civil rights complaint, filed pursuant to 42 U.S.C. § 1983, and a district court order denying his post-judgment motions. The appeals have been consolidated.

In 1999, a jury convicted Hunt of first-degree criminal sexual conduct, three counts of assault, and possession of a firearm during the commission of a felony. He was sentenced to 22 to 52 years of imprisonment. His conviction was upheld on direct appeal in the state courts, and his petition for a writ of habeas corpus was denied. In 2009, Hunt filed this civil rights complaint under 42 U.S.C. § 1983, alleging that his arrest without a warrant was unlawful, his conviction was illegal

*The Honorable Kenneth F. Ripple, Circuit Judge of the United States Court of Appeals for the Seventh Circuit, sitting by designation.

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due to his diminished capacity, and the state withheld the results of a competency evaluation. He sought monetary relief as well as his release from imprisonment. The district court sua sponte dismissed the complaint upon initial review for failure to state a claim, because Hunt's claims were barred by the holding of *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Hunt's subsequent motions to reconsider and amend his complaint were denied.

On appeal, appointed counsel argues that the district court erred in dismissing a potential claim that an illegal search caused Hunt compensable injury, citing *Heck*, 512 U.S. at 487 n.7.

Upon de novo review, see *Grinter v. Knight*, 532 F.3d 567, 571–72 (6th Cir. 2008), we conclude that this complaint was properly dismissed. Under *Heck*, a civil rights action for damages that would imply the invalidity of a conviction may not be brought until the subject conviction has been overturned. Although counsel argues that a claim that an illegal search caused Hunt compensable injury would not necessarily imply the invalidity of his conviction, and therefore would not be barred by the doctrine in *Heck*, review of the complaint in this case reveals no such claim. Hunt did raise a claim that his arrest without a warrant was unlawful, but that same claim was rejected on direct appeal in the state court because the court found that Hunt consented to the police entering his home. *People v. Hunt*, No. 223459, 2002 WL 31938728, at *3 (Mich. Ct. App. Nov. 22, 2002) (per curiam). Furthermore, it appears from the record of Hunt's habeas corpus proceeding that the evidence seized in the search was a weapon and a female undergarment. *Hunt v. Wolfenbarger*, No. 04-10046, 2007 WL 2421551, at *2 (E.D. Mich. Sept. 24, 2007). Therefore, the only conceivable injury from the seizure of this evidence would be Hunt's conviction, which counsel admits cannot be the basis of a damages claim under *Heck*.

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But even if we were to agree with Hunt that some of his search-and-seizure claims are not barred by *Heck*, dismissal of his complaint was still proper because those claims are time-barred. The search and arrest about which Hunt complains occurred in October 1998, but Hunt did not file his complaint until November 2009, well beyond the three-year statute of limitations that applies to § 1983 claims in Michigan. *See Wolfe v. Perry*, 412 F.3d 707, 713–14 (6th Cir. 2005). To the extent his claims are not barred by *Heck*, they do not benefit from the rule that a claim so barred does not accrue until the state conviction has been overturned. *Heck*, 512 U.S. at 489–90; *see Eidson v. State of Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 641 (6th Cir. 2007). Because Hunt's claims are either *Heck*-barred or time-barred, the district court properly dismissed his complaint.

Accordingly, the district court's dismissal of this complaint and denial of his motions for reconsideration and to amend his complaint are affirmed.