

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 2, 2022*

Decided December 14, 2022

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-3104

BRIAN HATCHER,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Eastern District of Wisconsin.

v.

No. 20-CV-1806

CHRISTOPHER SALDANA, et al.,
Defendants-Appellees.

J.P. Stadtmueller,
Judge.

ORDER

Brian Hatcher, a Wisconsin prisoner, appeals the district court's dismissal of his civil rights complaint asserting that three probation agents unconstitutionally prolonged his custody by revoking his extended supervision. Because Hatcher's claim is

* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), we affirm the judgment but modify the dismissal to be without prejudice.

In 2005, Hatcher was convicted in Wisconsin state court of two counts of armed robbery, *see* WIS. STAT. § 943.32(2), and sentenced to a ten-year bifurcated sentence (five years' imprisonment followed by five years' extended supervision). While Hatcher was on extended supervision after his period of incarceration was complete, his probation agents initiated revocation proceedings against him three times: in 2011 by Holly Ferry, 2015 by Kelly Bartazack, and 2019 by Christopher Saldana. After each revocation, Hatcher was returned to prison and under Wisconsin's sentencing laws he did not receive credit for the preceding period of supervision. Because of these repeated revocations, Hatcher did not complete his 10-year sentence until August 2022, 17 years after he was convicted. Hatcher is now in prison for a separate conviction.

Hatcher brought this suit for damages, contending that the prolonged custody for his armed robbery conviction violated his due process rights under the Fifth Amendment, his right under the Eighth Amendment to be free of cruel and usual punishment, and his right to liberty under the Fourteenth Amendment.

At screening, *see* 28 U.S.C. § 1915(e)(2), the district court dismissed Hatcher's complaint for failure to state a claim. The court explained that Hatcher's claim against Ferry was barred by Wisconsin's then-six-year statute of limitations. *See* WIS. STAT. § 893.53 (2011), *amended by* 2017 Wis. Act 235 (eff. Apr. 5, 2018) (reducing applicable statute of limitations from six to three years). As for his due process claim against Bartazack and Saldana, the court concluded that Hatcher did not allege that he was deprived of a revocation hearing and, regardless, Bartazack and Saldana were entitled to absolute immunity because the decision to initiate revocation proceedings is analogous to a judicial act.

On appeal, Hatcher generally challenges the dismissal of his complaint for failure to state a claim. We agree that dismissal was warranted, though for a reason different than those given by the district court. In *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), the Supreme Court held that a state prisoner's claim for damages is not cognizable under 42 U.S.C. § 1983 if it calls into question the lawfulness of his confinement, unless he can demonstrate that the underlying confinement has been invalidated through a direct appeal, postconviction relief, or some other means. We have applied the rule in *Heck* to a Wisconsin probationer's claim that state officials unlawfully prolonged his custody by revoking his release and extended supervision credit after his extended supervision terminated. *Huber v. Anderson*, 909 F.3d 201, 208 (7th Cir. 2018). Here,

Hatcher explicitly predicates his request for damages on the premise that his prolonged custody was unlawful, but no state or federal court has invalidated his confinement. Therefore, a § 1983 action is not the proper vehicle to challenge the lawfulness of his confinement. *Id.* at 207.

Hatcher's *Heck*-barred claims must be dismissed, though the possibility of future proceedings over the lawfulness of his confinement means that the dismissal should be without prejudice. *See Morgan v. Schott*, 914 F.3d 1115, 1122 (7th Cir. 2019).

We MODIFY the district court's judgment to dismiss Hatcher's claims without prejudice. As so modified, the judgment is AFFIRMED.