NONPRECEDENTIAL DISPOSITION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 April 13, 2023*
Decided April 14, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2273

LIONEL GIBSON,
Plaintiff-Appellant,

v.

KATHLEEN SULLIVAN and JUDITH MASSA,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:22-CV-154-PPS-APR

Philip P. Simon,
Judge.

O R D E R

Lionel Gibson, an Indiana prisoner, sued state officials under 42 U.S.C. § 1983, contending that they unlawfully refused to shorten his state criminal sentence. The

* The defendants were not served with process and are not participating in this appeal. After examining the record, we have agreed to decide this case without oral argument because the appeal is frivolous. *See* FED. R. APP. P. 34(a)(2)(A).

district court dismissed the suit. Because federal collateral relief on a claim that a prisoner is unlawfully in state custody is not available under § 1983, we affirm.

In 1999, Gibson began serving a 90-year sentence in Indiana for murder and attempted murder. *See* IND. CODE § 35-42-1-1 (1998). Over 20 years later, he asked a state judge to reduce his sentence because, he said, he faced attacks for aiding prison officers and his original sentence was erroneous. His request was construed as a motion to modify his sentence. *See* IND. CODE § 35-38-1-17. Because Gibson is a "violent criminal" and his request came more than a year after sentencing, it required the prosecutor's consent. *Id.* § 35-38-1-17(d), (k). The prosecutor did not consent, and the judge denied the motion. Gibson then moved under a different provision, *id.* § 35-38-1-15, to correct an "erroneous" sentence, and this motion was also denied.

Gibson responded with this suit under § 1983. He sued the prosecutor, and a judge involved in denying his motions, for damages and an order that they allow him to relitigate his sentence. The district court reviewed the complaint under 28 U.S.C. § 1915A and dismissed it because, among other problems, both defendants are immune from a claim for damages. The court also denied Gibson's motion to reconsider.

On appeal, Gibson contends unpersuasively that the district court should have ordered the defendants to allow him to contest the legality of his state sentence. First, the district court correctly ruled that the defendants are immune from any claim for damages. *See Stump v. Sparkman*, 435 U.S. 349, 355–57 (1978) (judges); *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976) (prosecutors). The acts that Gibson attributes to the judge (ruling against him) and prosecutor (not consenting to his motion) fell within their roles as judge and prosecutor. To the extent he seeks damages from either defendant, such relief is also barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), because his criminal conviction remains intact.

Second, the injunctive relief that Gibson seeks—an order allowing him to relitigate in a state court a challenge to state custody—is not available in this suit. The proper way to seek federal collateral review of state-court rulings enforcing state custody is to petition for a writ of habeas corpus, *see* 28 U.S.C. § 2254, not to sue under 42 U.S.C. § 1983. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). A court may recharacterize a § 1983 claim as a habeas-corpus petition, but it should do so only if the complaint names the correct defendant and does not face other procedural obstacles. *See, e.g.*, *Glaus v. Anderson*, 408 F.3d 382, 388–90 (7th Cir. 2005). Here the proper defendant is the warden of his prison, *id.*, but Gibson has not named the warden. Further, Gibson has already tried unsuccessfully to challenge his conviction and

sentence collaterally. *See Gibson v. Superintendent*, No. 2:17-CV-144 RL (N.D. Ind. Aug. 3, 2017) (denied as untimely). He therefore would need permission from us to bring a successive petition under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244(b)(3). But he has not raised any grounds here upon which we would grant permission. *Id.* § 2244(b); *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005).

We end with the matter of strikes. Under 28 U.S.C. § 1915(g), prisoners incur "strikes" for actions and appeals dismissed in their entirety as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *Turley v. Gaetz*, 625 F.3d 1005, 1012 (7th Cir. 2010). Gibson has thus incurred a "strike" in the district court, and another "strike" for filing this frivolous appeal.

AFFIRMED