NONPRECEDENTIAL DISPOSITION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 5, 2023*
Decided April 13, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2572

KENTE BARKER,
Plaintiff-Appellant,

v.

CHRISTINA REAGLE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:21-cv-00413-JPH-DLP

James Patrick Hanlon,
Judge.

O R D E R

Kente Barker, who was reimprisoned after his parole was revoked, sued under 42 U.S.C. § 1983 to contest the constitutionality of his reimprisonment, and the district court dismissed the suit with prejudice. Although Barker says he does not seek release, he wants a declaration that would necessarily imply that his incarceration is unlawful.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. *See* FED. R. APP. P. 34(a)(2)(C).

Because *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), bars his claim while he remains in prison, we affirm but modify the dismissal to be without prejudice.

At this stage, we accept as true the factual allegations in Barker's complaint. *See Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015). Barker was released from Indiana prison under a parole agreement. Two months later, parole officers—suspecting that Barker was trafficking drugs—arrested him at his home where they discovered and seized drug paraphernalia. Indiana began proceedings to revoke Barker's parole based on its allegations that he had violated his parole agreement by possessing drugs. Barker pleaded not guilty, denying that he had possessed drugs. He alleges that at his contested revocation hearings, the parole board did not allow him to present evidence, denied his requests for appointed counsel, and refused to show him the arrest warrant and supporting investigative reports. The board revoked Barker's parole.

Barker filed this suit under § 1983 against the parole board and other state officeholders in their official capacities. (We have substituted Christina Reagle, one of the current officeholders, as a party. *See* FED. R. APP. P. 43(c)(2).) Relying on *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973), Barker contends that the defendants "unlawfully reincarcerate[d]" him by refusing to appoint counsel for him. And he argues that the revocation was unconstitutional because the defendants—disregarding *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)—barred him from presenting evidence, refused to disclose the evidence against him, and provided an inadequate written decision. He wants a declaration that the "policies, practices, and customs, and conduct" that led to his reimprisonment are unconstitutional. He also requests the prospective relief of an injunction barring the defendants from using those same procedures against him in the future. Finally, he tells us that he "does not request a speedier release" in this suit and that he continues to contest the parole revocation in the state courts.

After reviewing the complaint, *see* 28 U.S.C. § 1915A, the district court dismissed it with prejudice. The court first reasoned that the defendants had acted in a quasi-judicial capacity during the revocation proceedings and were thus entitled to absolute immunity. Second, the court concluded that the suit effectively challenges Barker's confinement, and as such the suit must be brought as a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254; *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

We begin our analysis with some threshold observations. First, Barker tries to circumvent *Preiser* by arguing that he does not seek release from custody. The defendants respond that Barker lacks standing to seek prospective relief and that *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), blocks the entire suit. We bypass the standing

issue and focus on *Heck* because we may choose freely among reasons not to reach a case's merits, and as we are about to discuss, *Heck* resolves this case. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007). Next, the district court need not have ruled that the defendants are absolutely immune because Barker sued them only in their official capacities; thus absolute immunity does not apply. *See Kentucky v. Graham*, 473 U.S. 159, 166–67 (1985). Finally, Barker filed an amended complaint, but the district court reviewed the original one only. We assess both under *Heck*.

Barker contends that he may sue under § 1983 because, as just mentioned, he does not seek release. But under *Heck* and its progeny, Barker may not sue under § 1983 if his imprisonment is intact and success in the suit would necessarily imply that his incarceration is invalid. 512 U.S. at 486–87; *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005). That is Barker's case. His parole revocation and reimprisonment are intact (though he is litigating them in the state courts). And judgment in his favor on his claim that he was unlawfully reimprisoned would necessarily imply that his confinement is invalid.

Barker replies unpersuasively that under *Wilkinson* and *Skinner v. Switzer*, 562 U.S. 521 (2011), he may use § 1983 because he seeks prospective relief. *Wilkinson* allows prisoners to use § 1983 to seek purely prospective relief in challenging parole-release procedures if victory would mean only a new parole-eligibility review or parole-release hearing, not necessarily a finding that current incarceration is wrongful. 544 U.S. at 82. Similarly, *Skinner* held that a prisoner could seek DNA testing under § 1983 because the results—which might be incriminating, exculpatory, or inconclusive—would not necessarily undermine the lawfulness of his imprisonment. 562 U.S. at 534. By contrast, Barker seeks not just the prospective relief of an injunction against future wrongful reimprisonments but also a declaration that his revocation was unconstitutional (based on the procedures that he wants enjoined). Because that declaration would necessarily imply that his current imprisonment is unlawful, his additional request for the related prospective relief does not cure the *Heck* problem. *See Morgan v. Schott*, 914 F.3d 1115, 1121-22 (7th Cir. 2019).

We end with an observation about the nature of the dismissal of this case. The district court's dismissal on the ground that Barker must seek relief under § 2254 should have been "without—rather than with—prejudice." *Williams v. Wisconsin*, 336 F.3d 576, 580 (7th Cir. 2003). Likewise, a dismissal under *Heck* should be without prejudice. *See Johnson v. Rogers*, 944 F.3d 966, 968 (7th Cir. 2019). We therefore MODIFY the dismissal to be without prejudice and, as so modified, AFFIRM.