

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

January 24, 2017
David J. Bradley, Clerk

CHARLES WOMBA HOLMES,
TDCJ 1724919

Plaintiff,

versus

JOHN POLLOCK,

Defendant.

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CIVIL ACTION H-16-3521

Opinion on Dismissal

Charles Holmes sues John Pollock for civil rights violations. 42 U.S.C. § 1983. Pollock is a Brazos County Sheriff's Detective. Holmes moves to proceed as a pauper. 28 U.S.C. § 1915.

Holmes states he was wrongly arrested under the events he describes in his original complaint, which led to his imprisonment in a Texas prison. Holmes says Pollock illegally used Texas Penal Code section 16.02(c)(3)(A) to record a sixteen-year-old minor without parental permission. He contends Pollock took advantage of the vagueness and ambiguity in the wiretap statute in his seizure of Holmes's conversation with the minor.

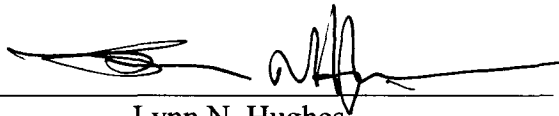
Holmes maintains Pollock denied him his Fourth Amendment right against unreasonable seizures. He says the statute allowed Pollock to wiretap a minor without parental permission and seize his words in his conversation with the minor. Holmes argues his due process rights were violated due to the vagueness and ambiguity of the language in the wiretap statute. He also claims Pollock violated his right to be free of unreasonable seizures. Holmes seeks declaratory relief.

A civil rights claim for damages which challenges the validity of a conviction or custody cannot proceed unless the conviction or confinement has been held invalid. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). *Heck* applies to claims for injunctive relief that imply the invalidity of a conviction or custody. *Kutzner v. Montgomery County*, 303 F.3d 339, 340-41 (5th Cir. 2002). Holmes's claims implicate the validity of his extended custody. There is no showing that a court has invalidated his confinement. The holdings in *Heck* and

Kutzner preclude and bar any civil rights relief. Holmes fails to state a claim recognized at law under *Heck*. Holmes is not entitled to declaratory relief or any other relief. This case will be dismissed.

The clerk will send a copy to the Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Three-Strikes List, and to the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793.

Signed on January 29, 2017, at Houston, Texas.



Lynn N. Hughes
United States District Judge