

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL L. CHASSE)
)
 Plaintiff)
)
 v.) Civil No. 04-56-B-W
)
 JEFFERY MERRILL, et al.,)
)
 Defendants)

Recommended Decision on Motion to Dismiss

The defendants in this 42 U.S.C. § 1983 action, three officials at the Maine State Prison, have filed a motion to dismiss the complaint. (Docket No. 12.) The plaintiff, Michael Chasse, complains that his Eighth and Fourteenth Amendment rights were violated because the defendants failed to credit him with ninety-nine days he served in pre-trial detention on the underlying criminal matter, resulting in Chasse serving a longer sentence than was his due. Chasse is currently in custody at the Maine State Prison but he is not in custody under the sentence which is the subject of this action. He finished serving that fifteen-month sentence on July 31, 1998. The defendants' motion to dismiss generates an interesting and unsettled question of law concerning the bringing of civil actions such as Chasse's pursuant to 42 U.S.C. § 1983 -- as opposed to seeking habeas relief from state imposed convictions and sentences -- when the §1983 plaintiff is no longer "in custody" under the challenged judgment and is, as a result, unable to pursue relief from that judgment in a 28 U.S.C. § 2254 petition. In line with the First Circuit's unswerving position on this question that has been lurking for sometime in the § 1983/

§ 2254 jurisprudence of the United States Supreme Court, I now recommend that the court **GRANT** the defendants' motion to dismiss.

Discussion

The defendants' motion is premised on the doctrine of Heck v. Humphrey, 512 U.S. 477 (1994) in which the United States Supreme Court held that if a 42 U.S.C. § 1983 plaintiff were to prevail and the outcome would implicitly throw into doubt the validity (including the length) of the conviction or sentence then the § 1983 plaintiff must first pursue and achieve state or federal habeas relief from the judgment before bringing a § 1983 action.

This term, the Supreme Court summarized the Heck holding and its pedigree and prodigy thusly:

Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration (emphasis added) are the province of habeas corpus, Preiser v. Rodriguez, 411 U.S. 475, 500(1973); requests for relief turning on circumstances of confinement may be presented in a § 1983 action. Some cases are hybrids, with a prisoner seeking relief unavailable in habeas, notably damages, but on allegations that not only support a claim for recompense, but imply the invalidity either of an underlying conviction or of a particular ground for denying release short of serving the maximum term of confinement. In Heck v. Humphrey, 512 U.S. 477 (1994), we held that where success in a prisoner's § 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence. Accordingly, in Edwards v. Balisok, 520 U.S. 641 (1997), we applied Heck in the circumstances of a § 1983 action claiming damages and equitable relief for a procedural defect in a prison's administrative process, where the administrative action taken against the plaintiff could affect credits toward release based on good-time served. In each instance, conditioning the right to bring a § 1983 action on a favorable result in state litigation or federal habeas served the practical objective of preserving limitations on the availability of habeas remedies.

Federal petitions for habeas corpus may be granted only after other avenues of relief have been exhausted. 28 U.S.C. § 2254(b)(1)(A). See Rose v. Lundy, 455 U.S. 509 (1982). Prisoners suing under § 1983, in contrast, generally face a substantially lower gate, even with the requirement of the Prison Litigation Reform Act of 1995 that administrative opportunities be exhausted first. 42 U.S.C. § 1997e(a).

Muhammad v. Close, ___ U.S. ___, 124 S. Ct. 1303, 1304 (2004).

A footnote that follows this Muhammad summary is the sleeper cell that, while not worrisome enough to the State to bear mention in its motion, is of some moment to Chasse's attempts to bring this action. Footnote 2 reads: "Members of the Court have expressed the view that unavailability of habeas for other reasons may also dispense with the Heck requirement." Id. at 1305 n.2 (citing Heck, 512 U.S. at 491, (Souter, J., concurring in judgment) and Spencer v. Kemna, 523 U.S. 1, 21-22 (1998) (Ginsburg J., concurring)). "This case," the Muhammad Court declared, "is no occasion to settle the issue." Id.

In this footnote the Court is referencing a recurring concern on the part of some justices that is best summarized in two concurrences and referenced in the dissent in Spencer v. Kemna, 523 U.S. 1 (1998). Justice Souter stated in his concurrence, joined by Justices O'Connor, Ginsburg, and Breyer:

Concurring in the judgment in Heck, I suggested a different rationale for blocking an inmate's suit with a requirement to show the favorable termination of the underlying proceedings. In the manner of Preiser v. Rodriguez, 411 U.S. 475 (1973), I read the "general" § 1983 statute in light of the "specific" federal habeas statute, which applies only to persons "in custody," 28 U.S.C. § 2254(a), and requires them to exhaust state remedies, § 2254(b). Heck v. Humphry, 512 U.S., at 497. I agreed that "the statutory scheme must be read as precluding such attacks," id., at 498, not because the favorable-termination requirement was necessarily an element of the § 1983 cause of action for unconstitutional conviction or custody, but because it was a "simple way to avoid collisions at the intersection of habeas and § 1983." Ibid.

I also thought we were bound to recognize the apparent scope of § 1983 when no limitation was required for the sake of honoring some other statute or weighty policy, as in the instance of habeas. Accordingly, I thought it important to read the Court's Heck opinion as subjecting only inmates seeking § 1983 damages for unconstitutional conviction or confinement to "a requirement analogous to the malicious-prosecution tort's favorable-termination requirement," id., at 500, lest the plain breadth of § 1983 be unjustifiably limited at the expense of persons not "in custody" within the meaning of the habeas statute. The subsequent case of Edwards v. Balisok, 520 U.S. 641 (1997), was, like Heck itself, a suit by a prisoner and so for present purposes left the law where it was after Heck. Now, as then, we are forced to recognize that any application of the favorable-termination requirement to § 1983 suits brought by plaintiffs not in custody would produce a patent anomaly: a given claim for relief from unconstitutional injury would be placed beyond the scope of § 1983 if brought by a convict free of custody (as, in this case, following service of a full term of imprisonment), when exactly the same claim could be redressed if brought by a former prisoner who had succeeded in cutting his custody short through habeas.

Spencer, 523 U.S. at 20-21 (Souter, J., joined by O'Connor, J., Ginsburg, J., and Breyer, J. concurring). In a footnote Justice Souter hypothesized, "The convict given a fine alone, however onerous, or sentenced to a term too short to permit even expeditious litigation without continuances before expiration of the sentence, would always be ineligible for § 1983 relief." Id. at 21 FN* (citing Heck v. Humphrey, 512 U.S. 477, 500 (Souter, J., concurring in judgment)).

In her separate Spencer concurrence Justice Ginsburg reflected:

The Court held in Heck v. Humphrey, 512 U.S. 477 (1994), that a state prisoner may not maintain an action under 42 U.S.C. § 1983 if the direct or indirect effect of granting relief would be to invalidate the state sentence he is serving. I joined the Court's opinion in Heck. Mindful of "real-life example[s]," among them this case, cf. 512 U.S., at 490, n. 10, I have come to agree with Justice SOUTER's reasoning: Individuals without recourse to the habeas statute because they are not "in custody" (people merely fined or whose sentences have been fully served, for example) fit within § 1983's "broad reach." See id., at 503 (SOUTER, J., concurring in judgment); cf. Henslee v. Union Planters Nat. Bank & Trust Co., 335 U.S. 595, 600 (Frankfurter, J., dissenting) ("Wisdom too often never comes, and so one ought not to reject it merely because it comes late."). On that

understanding of the state of the law, I join both the Court's opinion and Justice SOUTER's concurring opinion in this case.

523 U.S. at 21-22 (Ginsburg, J., concurring).

And Justice Stevens, in dissent, noted: "Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as Justice SOUTER explains, that he may bring an action under 42 U.S.C. § 1983." Id. 25 n.8 (Stevens, J., dissenting).

In his amended complaint Chasse alleges that he did everything in his power to get redress from the improper calculation of his sentence by the defendants during the time he was serving his sentence but that he was stymied in these efforts by the defendants. It seems that in the view of these concurrences Chasse's is a compelling case on the face of the complaint for not applying the Heck bar to his efforts to get 42 U.S.C. § 1983 redress. And it is not at all clear if and how Chasse could have sought federal habeas relief during the time he was serving that relatively short sentence. See Preiser v. Rodriguez, 411 U.S. 475, 494-97 (1973) (recognizing the predicament of prisoners who are trying to challenge the denial of good-time credits as being similar to prisoners serving short sentences and suggesting that a federal court might entertain a habeas corpus application immediately under § 2254(b) -- presumably subsection (1)(B) -- but not reaching the issue).

The Second, Seventh, and Eleventh Circuit Courts of Appeal have wrestled with this issue in similar circumstances and concluded that the question left unanswered in Heck, Spencer, and, now, Muhammed, should be answered in the spirit of these concurrences and the Stevens dissent. See Harden v. Pataki, 320 F.3d 1289, 1298 (11th Cir. 2003) (concluding that the Heck bar did not operate in an extradition proceeding in

which the plaintiff was not "in custody" within the meaning of habeas proceedings); Huang v. Johnson, 251 F.3d 65, 73 -75 (2d Cir. 2001) (determining that a § 1983 action could proceed even though the plaintiff had long been released from the confinement, the duration of which was the heart of the § 1983 challenge, as no habeas remedy was available); Carr v. O'Leary, 167 F.3d 1124, 1127(7th Cir. 1999) ("Because Carr was released from prison after the suit was filed, he could no longer bring a habeas corpus proceeding--his only remaining route for getting his disciplinary sanction reversed. And Spencer (not the dictum, but the holding) makes clear that even if he had sought habeas corpus before his release, the release would have mooted the proceeding. With Carr unable to get the disciplinary sanction reversed, five Justices would not consider the sanction a bar to a section 1983 suit even though that suit calls into question the validity of the sanction."). The Third and Ninth Circuits have flirted with the question but did not have to make the call. See Ramirez v. Galaza, 334 F.3d 850, 859 n.7 (9th Cir. 2003) ("For this reason, we need not consider the broader question -- opened in Spencer v. Kemna, 523 U.S. 1,(1998) -- of whether the favorable termination rule applies to former or current prisoners who cannot seek relief under the federal habeas corpus statute."); Torres v. Fauver, 292 F.3d 141, 145 (3d Cir. 2002) (exploring but not deciding the question generated in Spencer of whether the favorable termination rule applies to persons unable to petition for a writ of habeas corpus); see also Nonnette v. Small, 316 F.3d 872, 875-77 (9th Cir. 2002) ("Does the unavailability of a remedy in habeas corpus because of mootness permit Nonnette to maintain a § 1983 action for damages, even though success in that action would imply the invalidity of the disciplinary proceeding that caused revocation of his good-time credits? Although the answer is not entirely clear

under Heck and its progeny, we join the Second and Seventh Circuits in concluding that, in these circumstances, a § 1983 claim may be maintained.").

However, the First Circuit Court of Appeals was not so inclined when invited to consider the Spencer concurring and dissenting opinions in a 42 U.S.C. § 1983 action in which the plaintiffs were bringing suit on behalf of an individual who died while trying to challenge his conviction under 28 U.S.C. § 2254. The Figueroa v. Rivera Panel reasoned:

The Heck Court ruled in no uncertain terms that when a section 1983 claimant seeks "to recover damages for allegedly unconstitutional conviction or imprisonment," he "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 486-87. In the absence of such a showing of impugment, the claim "is not cognizable under [section] 1983." Id. at 487. Here, the appellants do not allege that an authorized tribunal or executive body overturned or otherwise invalidated Ríos's conviction. Consequently, Heck bars the unconstitutional conviction and imprisonment claims. See, e.g., White v. Gittens, 121 F.3d 803, 806-07 (1st Cir.1997); Hamilton v. Lyons, 74 F.3d 99, 103 (5th Cir.1996).

The appellants counter that strict application of Heck works a fundamental unfairness in this case. After all, Ríos was attempting to impugn his conviction when death intervened. Although this plaintiff strikes a responsive chord, it runs afoul of Heck's core holding: that annulment of the underlying conviction is an element of a section 1983 "unconstitutional conviction" claim. See 512 U.S. at 487. Creating an equitable exception to this tenet not only would fly in the teeth of Heck but also would contravene the settled rule that a section 1983 claimant bears the burden of proving all the essential elements of her cause of action. See Ruggiero v. Krzeminski, 928 F.2d 558, 562- 63 (2d Cir.1991).

147 F.3d 77, 80 -81 (1st Cir. 1998) (footnote omitted).

In a footnote to this passage of determinative importance for this court's treatment of the defendants' motion to dismiss, the Panel obeyed its own admonishment to lower courts:

We are mindful that dicta from concurring and dissenting opinions in a recently decided case, Spencer v. Kemna, 523 U.S. 1 (1998), may cast doubt upon the universality of Heck's "favorable termination" requirement. See id. at [20-21](Souter, J., concurring); id. at [21-22] (Ginsburg, J., concurring); id. at [25] n.8 (Stevens, J., dissenting). The Court, however, has admonished the lower federal courts to follow its directly applicable precedent, even if that precedent appears weakened by pronouncements in its subsequent decisions, and to leave to the Court "the prerogative of overruling its own decisions." We obey this admonition.

147 F.3d at 81 n.3 (some internal citations omitted). At least one district court in this circuit has concluded, as I do here, that this pronouncement by the First Circuit dictates rejecting efforts to challenge a conviction or sentence via a 42 U.S.C. § 1983 action if that conviction or sentence has not already been invalidated. See Davis v. Schifone, 185 F.Supp.2d 95, 99 -100 (D.Mass. 2002); but see Limone v. United States, 271 F.Supp.2d 345, 360-61 (D. Mass. 2003) (addressing suit on behalf of prisoners who die before their convictions were reversed in light of "government wrongdoing that effectively denied access to post-conviction remedies" and "the unique factual circumstances" of the case, determining that the "favorable termination" requirement was satisfied under a theory of constructive reversal).

It is true that the First Circuit has since stated in dicta when drawing an analogy to Heck: "Heck v. Humphrey ... provides that, at least while a defendant is still imprisoned, he may not bring a § 1983 action to attack his conviction." Olsen v. Correiro, 189 F.3d 52, 68 -69 (1st Cir. 1999) (emphasis added). However given the Figueroa v. Rivera Panel footnote 3 admonition it is my view that the only disposition in this case by this court is one of granting the motion to dismiss. Chasse simply cannot overcome the Heck bar to a § 1983 action in these circumstances. His argument that he is not challenging his underlying state court conviction but merely the length of the sentence prison officials

required him to serve does not overcome the hurdle of Edwards v. Balisok, 520 U.S. 641 (1997), a direct application of the Heck bar to a prisoner in circumstances challenging the length of confinement.

Conclusion

For these reasons I recommend that the Court **GRANT** the defendants' motion to dismiss.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

September 24, 2004.

CHASSE v. MERRILL et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to: MAG. JUDGE MARGARET J.

KRAVCHUK

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 04/13/04

Jury Demand: Plaintiff

Nature of Suit: 550 Prisoner: Civil Rights

Jurisdiction: Federal Question

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