

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-21071  
Summary Calendar

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RAPHAEL FOLEY,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION, D. CHERRY, Warden; TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CV-160  
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June 11, 2002

Before DAVIS, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Raphael Foley, Texas state prisoner #656542, challenges the district court's 28 U.S.C. § 1915 dismissal as frivolous of his pro se, in forma pauperis 42 U.S.C. § 1983 civil rights action. Foley contends that the district court abused its discretion when it determined that Foley's claims were barred by Heck v. Humphrey, 512 U.S. 477 (1994).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

As to Foley's arguments that call into question the issues determined by his disciplinary proceedings, the district court did not abuse its discretion in ordering dismissal pursuant to Heck. See Edwards v. Balisok, 520 U.S. 641, 646-648 (1997); Stephenson v. Reno, 28 F.3d 26, 27-28 (5th Cir. 1994). However, the district court abused its discretion in dismissing Foley's retaliation claims under Heck. See Woods v. Smith, 60 F.3d 1161, 1164-66 (5th Cir. 1995). Accordingly, we remand for further proceedings in connection with Foley's claims that disciplinary action and other actions were taken against him by prison officials in retaliation for his participation in the grievance process.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.