

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-60461  
Conference Calendar

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TROY E. COOK,

Plaintiff-Appellant,

versus

DAVID GRISHAM, Union County City Department,  
Chief of Police; JAMES O. FORD, Attorney at Law;  
RUBY ROBERTSON,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:99-CV-52-BD  
- - - - -

December 14, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Troy E. Cook, Mississippi, prisoner # 033020, appeals the dismissal of his 42 U.S.C. § 1983 complaint as frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i). Cook argues that the district court erred in dismissing his complaint without first holding a hearing pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), holding an evidentiary hearing, or allowing him to amend his complaint.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cook has failed to meet the requirements of Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), and thus his complaint is barred. In addition, Heck notwithstanding, Cook's claim against Ford, a private attorney, does not involve state action and is not cognizable under § 1983. Hudson v. Hughes, 98 F.3d 868, 873 (5th Cir. 1996); O'Brien v. Colbath, 465 F.2d 358, 359 (5th Cir. 1972). Accordingly, Cook's appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2.

The district court's dismissal counts as a strike against Cook. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). This court's dismissal of the appeal as frivolous counts as another strike. Id. Should Cook accumulate three strikes, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). Cook is cautioned to review any pending appeals to ensure that they do not raise frivolous issues.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.