
No. 95-2648

Kevin Lamont Evans,
Appellant,

v.

City of Columbia, Mo; City of
Columbia Police Dept.; Randy
McMillen, #126; Dianne Anliker,
#182; Doug Parsons, #108; Jay
Bramblett, #162; Todd Grimes,

Appellees.

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* Appeal from the United States
* District Court for the
* Western District of Missouri.

* [UNPUBLISHED]
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Submitted: December 5, 1995

Filed: March 27, 1996

Before FAGG, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Missouri inmate Kevin L. Evans appeals the district court's dismissal as frivolous of his 42 U.S.C. § 1983 action. We reverse.

Evans filed this pro se complaint alleging he was charged with, and subsequently convicted of, robbery after witnesses identified him in a photographic line-up. He asserted that his due process rights were violated, as police officers "purposely misplaced" the line-up photos, and the prosecution introduced a different set of photos at trial. Evans expressly stated that he sought relief in the form of damages only.

Citing Heck v. Humphrey, 114 S. Ct. 2364, 2372 (1994), the district court dismissed the complaint without prejudice pursuant to 28 U.S.C. § 1915(d), reasoning that Evans's claim for damages was not cognizable under section 1983, as it was an indirect challenge to his length of confinement and he had not alleged his conviction had been invalidated. On appeal, Evans argues that he was not attacking his underlying conviction; rather, he was seeking to recover damages for the mental anguish and emotional distress he suffered as a result of the violation of his rights.

The district court abused its discretion in dismissing the complaint, see Cokeley v. Endell, 27 F.3d 331, 332 (8th Cir. 1994) (standard of review for § 1915(d) dismissal), as Evans's procedural due process claim has an arguable basis in fact and law. See Neitzke v. Williams, 490 U.S. 319, 325 (1989). Contrary to the district court's conclusion, the Heck Court explicitly stated that section 1983 claims "for using the wrong procedures, [rather than] for reaching the wrong result," are cognizable. Heck, 114 S. Ct. at 2370, 2372 (damages claims which would necessarily imply invalidity of conviction are not cognizable under § 1983 unless conviction has been invalidated; damages claims challenging procedures used to deprive prisoners of good-time credits survive); see also Armento-Bey v. Harper, 68 F.3d 215, 216 (8th Cir. 1995) (per curiam) (same).

Accordingly, we reverse.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.