

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1660

Deterrius Wilson

Appellant

v.

Randy F. Philhours, Circuit Judge, Crittenden County, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:23-cv-00044-BSM)

ORDER

The petition for rehearing by the panel is denied.

June 08, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1660

Deterrius Wilson

Plaintiff - Appellant

v.

Randy F. Philhours, Circuit Judge, Crittenden County; Thomas A. Young, Deputy Prosecuting Attorney, Crittenden County; Abby Rizor, Records Personnel Grimes Unit, ADC; Dexter Payne, Director, ADC

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:23-cv-00044-BSM)

JUDGMENT

Before KELLY, ERICKSON, and STRAS, Circuit Judges.

The motion for leave to proceed in forma pauperis has been considered and is granted.

The full \$505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 05, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

**DETERRIUS L. WILSON
ADC #148279**

PLAINTIFF

v.

CASE NO. 2:23-CV-00044-BSM

**RANDY PHILHOURS,
Circuit Judge, Crittenden County, et al.**

DEFENDANTS

ORDER

Deterrius Wilson's motion to proceed *in forma pauperis* [Doc. No. 1] is granted, but he must pay the full filing fee of \$350. His complaint [Doc. No. 2] is dismissed without prejudice.

A partial filing fee of \$27.83 is assessed. *See* Doc. No. 1. After paying the initial filing fee, Wilson's custodian shall withdraw monthly payments in the amount of twenty percent of the preceding month's income credited to his account each time the account exceeds \$10 until the statutory fee has been paid in full. 28 U.S.C. § 1915(b)(2). The clerk is directed to send a copy of this order to the Warden of the Grimes Unit of the Arkansas Division of Corrections, 300 Corrections Dr., Newport, Arkansas 72112; the ADC Trust Fund Centralized Banking Office, P.O. Box 8908, Pine Bluff, Arkansas 71611; and the ADC Compliance Office, P.O. Box 20550, Pine Bluff, Arkansas 71612. Payments are to be forwarded to the clerk with Wilson's name and case number clearly identified.

Wilson's complaint is subject to screening. *See* 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). Wilson sues Crittenden County Judge Randy Philhours, prosecutor Thomas Young,

ADC records employee Abby Rizor, and ADC Director Dexter Payne under 42 U.S.C. section 1983, asserting a variety of constitutional claims resulting from what he believes is an illegal sentence. Doc. No. 2 at 4. He seeks damages and release from prison.

A public records search reveals that, in 2010, Wilson pleaded guilty to theft, drug, and firearm charges and was sentenced to 96 months' imprisonment to be followed by 120 months' suspended imposition of sentence. *See State v. Wilson*, 18CR-09-1377 (Crittenden County) (Judgment). Since that time, Wilson violated the conditions of his suspended sentence and was sentenced to additional jail time. *Id.* (Sentencing Order); Doc. 2 at 18. In considering the revocation, the State realized Wilson had been erroneously sentenced in one of his previous criminal convictions. On the State's motion, the illegal sentence was corrected in February 2019. *Id.* Wilson challenges the validity of the corrected sentence.

Wilson's claims fail for a number of reasons. First, any claims surrounding Wilson's February 2019 corrected sentence are barred by the three year statute of limitations governing section 1983 actions. *See Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001). Second, even if the claim was not time barred, Wilson's damages claims are barred by *Heck v. Humphrey* because there is no indication that his conviction has been reversed, expunged, declared invalid, or questioned, and success in this lawsuit would imply the invalidity of his conviction. 512 U.S. 477 (1994). To the extent that Wilson is seeking to challenge the validity of his state criminal sentence, he must do so either in state post-conviction proceedings or through a petition for federal habeas review. In fact, Wilson is presently

doing just that as he has a state habeas corpus action pending in Crittenden County Circuit Court. *See State v. Wilson*, 18CR-09-1377 (Crittenden County) (Habeas Petition). Beyond damages, Wilson asks for release from prison. He cannot obtain that relief in this section 1983 action. The sole remedy for a prisoner seeking release from prison is to file a federal *habeas* petition. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

Wilson's complaint fails to state a claim on which relief may be granted. Accordingly, his complaint is dismissed without prejudice. It is recommended that this dismissal counts as a "strike" for the purposes of 28 U.S.C. § 1915(g), and an *in forma pauperis* appeal would not be taken in good faith.

IT IS SO ORDERED this 23rd day of March, 2023.

Brian S. Miller
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**