

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Graham v. Waters

No. 19-1205, United States Court of Appeals for the Tenth Circuit (February 25, 2020)

SUMMARY

In an unpublished opinion, the Tenth Circuit affirmed dismissal of a pro se inmate's 42 U.S.C. § 1983 action against Colorado Parole Board members, holding that the inmate's request for release from custody was not cognizable under §1983 (the proper remedy is habeas corpus), that Heck v. Humphrey barred damages claims challenging the validity of parole revocation, and that the defendants were entitled to absolute immunity for parole decisions and Eleventh Amendment sovereign immunity from official-capacity damages. The court also enforced the "firm waiver rule," refusing to review the merits because the inmate failed to file timely objections to the magistrate judge's report and recommendation, and no exception for pro se litigants or the interests of justice applied.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Allison H. Eid; Lucero; Phillips; Eid
JURISDICTION	Federal
DECIDED	February 25, 2020
DOCKET	19-1205
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's dismissal of §1983 action with prejudice.
STANDARD OF REVIEW	plain error
PRECEDENTIAL VALUE	Unpublished
PARTIES	Jimmie Graham v. Tom Waters, Denise Balazic, Alexandra Walker

TOPICS

- section 1983
- civil procedure
- appellate procedure
- sovereign immunity
- due process

PRACTICE AREAS

- Civil Rights
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing Graham's §1983 claims under Heck v. Humphrey, absolute immunity, and Eleventh Amendment sovereign immunity.
2. Whether the firm waiver rule bars appellate review of the merits due to Graham's failure to file timely objections to the magistrate judge's report and recommendation.
3. Whether the district court abused its discretion in denying Graham's motion for reconsideration.

HOLDINGS

1. Under the firm waiver rule, a party who fails to file timely objections to a magistrate judge's report and recommendation waives appellate review of both factual and legal questions, unless an exception applies.
2. A §1983 claim for damages that would necessarily imply the invalidity of a parole revocation is barred by Heck v. Humphrey.
3. Parole board members have absolute immunity from damages liability for actions taken in their official duties regarding the granting or denying of parole.
4. Eleventh Amendment sovereign immunity bars damages claims against state officials in their official capacities.
5. A request for release from custody is not cognizable in a §1983 action; the sole remedy is habeas corpus.

KEY QUOTATIONS

“a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence” (at 487)

“[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration.” (at 81-82)

“a party who fails to make a timely objection to the magistrate judge's findings and recommendations waives appellate review of both factual and legal questions” (at 4)

FACTUAL BACKGROUND

In 2016, Graham began serving a five-year parole sentence on an Escape charge. In 2018, he was convicted of a technical parole violation, and the Colorado Board of Parole revoked his parole for the remainder of the five-year period. Graham appealed to the Parole Board, which denied his appeal. He then filed a §1983 action against three Parole Board members, alleging violations of his Fourteenth Amendment equal protection and due process rights, and seeking damages and an injunction for release.

PROCEDURAL HISTORY

Graham filed a §1983 action against three Colorado Parole Board members. A magistrate judge recommended dismissal on grounds of Heck v. Humphrey, absolute immunity, Eleventh Amendment immunity, and failure to

state a claim. Graham failed to file timely objections; the district court adopted the recommendation and dismissed with prejudice. Graham moved for reconsideration under Rule 59(e), which was denied. He appealed.

DISPOSITION

affirmed

CASES CITED

- Morales-Fernandez v. INS, 418 F.3d 1116 (10th Cir. 2005)
- Moore v. United States, 950 F.2d 656 (10th Cir. 1991)
- Duffield v. Jackson, 545 F.3d 1234 (10th Cir. 2008)
- Rounds v. Corbin, 236 F. App'x 402 (10th Cir. 2007)
- Heck v. Humphrey, 512 U.S. 477 (1994)
- Crow v. Penry, 102 F.3d 1086 (10th Cir. 1996)
- Wilkinson v. Dotson, 544 U.S. 74 (2005)
- Russ v. Uppah, 972 F.2d 300 (10th Cir. 1992)
- Giese v. Scafe, 133 F. App'x 567 (10th Cir. 2005)
- Simmat v. U.S. Bureau of Prisons, 413 F.3d 1225 (10th Cir. 2005)
- Kentucky v. Graham, 473 U.S. 159 (1985)
- Duncan v. Gunter, 15 F.3d 989 (10th Cir. 1994)
- Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989)
- Preiser v. Rodriguez, 411 U.S. 475 (1973)
- United States v. Furman, 112 F.3d 435 (10th Cir. 1997)
- United States v. Pinson, 584 F.3d 972 (10th Cir. 2009)

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