

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOV 4 1998

PATRICK FISHER
Clerk

HENRY LEE McCONE,

Plaintiff - Appellant,

vs.

WYOMING ATTORNEY GENERAL;
JUDIE L. CHITWOOD; JUDY
UPHOFF,

Defendants - Appellees.

No. 97-8118
(D.C. No. 97-CV-142-D)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY, and HENRY**, Circuit Judges.**

Plaintiff-Appellant Henry Lee McCone appeals from the district court's dismissal, without prejudice, of his 42 U.S.C. §1983 claim seeking damages and alleging violation of his constitutional rights by state officers during proceedings to revoke his parole. Our jurisdiction arises under 28 U.S.C. § 1291, and we

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

affirm. The district court was correct in determining that Heck v. Humphrey, 512 U.S. 477 (1994), bars the present action absent a determination that the parole revocation was invalid. See White v. Gittens, 121 F.3d 803, 807 (1st Cir. 1997); Crow v. Penry, 102 F.3d 1086, 1087 (10th Cir. 1996). Likewise, the district court was correct in holding that, even if the complaint was construed as a habeas corpus petition, Mr. McCone had failed to exhaust state court remedies. See 28 U.S.C. § 2254(b)(1)(A); see also Demarest v. Price, 130 F.3d 922, 932 (10th Cir. 1997).

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge