

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 11, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-0689**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**LEONARD COLLINS,**

**PLAINTIFF-APPELLANT,**

**V.**

**KENNETH MORGAN, KENT DEMERS, LT. SLAYTON, AND  
E. ANDREW,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
ROBERT DECHAMBEAU, Judge. *Affirmed.*

Before Dykman, P.J., Eich, and Vergeront, J.J.

PER CURIAM. Leonard Collins appeals an order granting the defendants'<sup>1</sup> motion for summary judgment and dismissing Collins' claim for

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<sup>1</sup> The defendants include Kenneth Morgan, the warden of the Racine Correctional Institution (RCI); Kent Demers, a unit manager at RCI; Lt. David Slayton, a supervising officer at RCI; and E. Andrews, a correctional officer at RCI.

declaratory relief and monetary damages based on alleged violations of his procedural due process rights at his prison disciplinary hearing under 42 U.S.C. § 1983. We conclude that under the law established in *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), and *Edwards v. Balisok*, 117 S. Ct. 1584, 1589 (1997), Collins' claim necessarily implies that his sentence is invalid and is therefore not cognizable under § 1983. We affirm the circuit court's order granting summary judgment for the defendants and dismissing Collins' § 1983 action.

### BACKGROUND

While Collins was an inmate at Racine Correctional Institution, he was charged with violations of WIS. ADM. CODE § DOC 303.25 (disrespect), WIS. ADM. CODE § DOC 303.271 (lying about staff), WIS. ADM. CODE § DOC 303.31 (false names and titles) and WIS. ADM. § DOC 303.41 (counterfeiting and forgery) in conduct report #680478. The report alleged Collins wrote a derogatory and profane letter that contained false information about staff, signed the letter with a false name, and intentionally made the letter appear to be from another party. After a hearing, the adjustment committee found Collins guilty of all the charges and penalized him with 8 days adjustment segregation and 360 days program segregation. Under § 302.11(2)(b), STATS., this penalty automatically extended Collins' mandatory release date.<sup>2</sup>

After an unsuccessful administrative appeal, Collins' filed a complaint in circuit court under 42 U.S.C. § 1983 alleging that the defendants

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<sup>2</sup> Section 302.11(2)(b), STATS., provides, in pertinent part:

[A]ny inmate who is placed in adjustment, program or controlled segregation status shall have his or her mandatory release date extended by a number of days equal to 50% of the number of days spent in segregation status.

violated his First Amendment right to freedom of speech, his Fourteenth Amendment rights to due process, equal protection, and a fair hearing by depriving him of the right to present evidence. Specifically, Collins alleged he was not allowed to review the inculpatory report of the handwriting expert or to effectively challenge that report; he was unjustly limited in questioning his witness; the adjustment committee was intentionally partial; and his re-hearing did not follow the proper procedures. In addition to compensatory and punitive damages, Collins sought injunctive relief that would, among other things, “expunge the disciplinary conviction from [the] plaintiff[’s] record.”

The circuit court granted the defendant’s motion for summary judgment and dismissed Collins’ § 1983 claim on the grounds that the defendant’s alleged conduct was random and unauthorized and there was an adequate state remedy—the common law writ of certiorari.

## ANALYSIS

Collins argues his 42 U.S.C. § 1983 claim was appropriate because the defendants’ conduct was authorized and predictable and the state law writ of certiorari would not provide an adequate remedy. The defendants contend, among other arguments, that following the law of *Edwards*, 117 S. Ct. 1584, Collins’ claim is not cognizable under § 1983 because a judgment in his favor would necessarily imply the invalidity of his good time credits.<sup>3</sup> We agree and affirm the circuit court’s order on this basis. In light of this decision, we do not reach

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<sup>3</sup> Collins did not file a reply brief and did not, therefore, respond to the defendants’ argument based on *Edwards v. Balisok*, 117 S. Ct. 1584 (1997).

Collins' arguments that the alleged conduct was authorized and predictable and that certiorari was not an adequate remedy.

This case involves a prison inmate filing suit under 42 U.S.C. § 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

In *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973), the Supreme Court held that a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release does not have a claim cognizable under § 1983; instead such a claim must be brought in habeas corpus proceedings, subsequent to exhaustion of state remedies. The Supreme Court extended this limitation on state prisoner § 1983 claims in *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), and held:

[W]hen a state prisoner seeks damages in a § 1983 suit, the ... court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

In this case, a judgment in Collins' favor would "expunge the disciplinary conviction from [the] plaintiff[s] record" and, as a direct result of that expungement, reverse the extension of Collins' mandatory release date or, alternatively stated, restore his good time credits. In other words, such a judgment would "necessarily imply" the invalidity of his sentence.

In 1997, the Supreme Court specifically considered the question of “whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits is cognizable under § 1983.” *Edwards*, 117 S. Ct. at 1586. In *Edwards*, as in this case, the prisoner challenged the procedures employed at a prison disciplinary hearing in which he lost good time credits. Although the prisoner in *Edwards* did not specifically request the reinstatement of his lost good time credits, the Court held that a claim for damages “based on allegations of deceit and bias on the part of the decisionmaker [does] necessarily imply the invalidity of the punishment imposed, [and] is not cognizable under § 1983.” *Id.* at 1589.

Following the law established in *Edwards* and *Heck*, we conclude that Collins’ claim for damages based on the allegedly unconstitutional procedures employed at the hearing that led to a punishment that included an extension of his mandatory release date is not cognizable under 42 U.S.C. § 1983.

*By the Court.*—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

