Tennessee Journal of Law and Policy

Volume 2 | Issue 3 Article 7

March 2014

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Cover Page Footnote

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THE PRISONER AS MASTER OF HIS OWN LAWSUIT: THE INTERPRETATION OF PRISONERS' §1983 CIVIL RIGHTS CLAIMS AFTER *WILKINSON V. DOTSON*

Lisa A. White[*]

I. Introduction

In *Wilkinson v. Dotson*,[1] the U.S. Supreme Court explored the "jurisdictional periphery of habeas corpus"[2] and re-examined 42 U.S.C. § 1983 as a mechanism to challenge incarceration procedures.[3] The issue before the Court was whether prisoners may seek declaratory and injunctive relief for alleged unconstitutional parole procedures through a § 1983 challenge or "whether they must instead seek relief exclusively under the federal habeas corpus statutes."[4] In *Wilkinson*, two Ohio prisoners individually brought § 1983 claims against the Ohio Department of Rehabilitation and Corrections for violating their civil rights during parole considerations.[5] In each case, the district court held that "the prisoner would have to seek relief through a habeas corpus suit."[6] After the consolidation and reversal of the cases by the Sixth Circuit, the State of Ohio petitioned the Supreme Court for

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[1] Wilkinson v. Dotson, 544 U.S. 74 (2005).

[2] Franceski v. Bureau of Prisons, No. 04 Civ. 8667, 2005 U.S. Dist. LEXIS 5961, at *10-13 (S.D.N.Y. 2005) (explaining that the *Wilkinson* holding does not preclude a prisoner from bringing a single action in habeas and under § 1983).

[3] *Wilkinson*, 544 U.S. at 76.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 77.

certiorari.[7]

In granting review of *Wilkinson*, the Supreme Court revisited and attempted to clarify the "somewhat confusing"[8] intersection between claims which must be brought in habeas after complete exhaustion of state remedies and other claims which are cognizable under § 1983, which only requires the exhaustion of administrative remedies.[9] In this case, William Dotson and Rogerico Johnson, both long-term prisoners in Ohio, individually brought § 1983 actions against the Ohio Department of Rehabilitation and Corrections[10] after the state parole board applied recently adopted—and significantly harsher—guidelines to each inmate's parole consideration.[11]

William Dotson, whose life sentence began in 1981, claimed that the state violated the Constitution's Ex Post Facto and Due Process Clauses when the parole board determined that he "should not receive further consideration for parole for at least five more years."[12] To make this determination, the parole board applied guidelines adopted in 1998 rather than those in place when Dotson committed his crime.[13]

Similarly, the parole board applied the 1998 parole guidelines when it decided Rogerico Johnson was "unsuitable for release" in 1999.[14] Like Dotson, Johnson began his sentence prior to the adoption of the 1998 guidelines[15] and claimed the corrections department violated the Ex Post Facto Clause of the Constitution by

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[7] *Id.*
[8] Dotson v. Wilkinson, 329 F.3d 463, 466 (6th Cir. 2003), *aff'd* 544 U.S. 74 (2005).
[9] *Wilkinson*, 544 U.S. at 92; Preiser v. Rodriguez, 411 U.S. 475, 477 (1973).
[10] *Wilkinson*, 544 U.S. at 76.
[11] *Id.* at 76-77.
[12] *Id.* at 76.
[13] *Id.* at 76-77.
[14] *Id.* at 77.
[15] *Id.*

applying the newer guidelines.[16] Furthermore, Johnson claimed that the parole board's proceedings violated the Due Process Clause "by having too few members present and by denying him an adequate opportunity to speak."[17] Each prisoner sought (1) declarative relief prohibiting the retroactive application of the 1998 parole guidelines, and (2) concomitant injunctive relief.[18] The Supreme Court held that the prisoners had cognizable claims under § 1983[19] because a judgment in their favor would neither "necessarily spell speedier release" nor "imply the invalidity of confinement."[20] Instead, a favorable judgment would only affect the timing and proper procedure of their parole considerations, neither of which "lies at the core of habeas corpus."[21]

This synopsis argues that the majority in *Wilkinson* astutely weighs the importance of protecting the prisoners' civil rights against the state's presumption that the prisoners brought these cases "only because they believe[d] that victory on their claims [would] lead to speedier release from prison."[22] Thus, a deciding factor in whether a claim is cognizable under § 1983, or alternately, whether it must be brought under a habeas corpus suit, rests on the actual relief sought by the plaintiff, rather than on the potential consequences or remote outcome of a judgment in his favor.

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[16] *Id.*
[17] *Id.*
[18] *Id.* at 76.
[19] *Id.* at 82.
[20] *Id.*
[21] *Id.* (citing *Preiser*, 411 U.S. at 489) (internal quotations omitted).
[22] *Id.* at 78.

II. Differentiating Between Civil Rights Actions and Habeas Corpus Petitions

A. The Intersection Between Habeas Corpus and 42 U.S.C. § 1983

Prior to *Wilkinson*, the Supreme Court considered the intersection between the habeas corpus statute, 28 U.S.C. § 2254, and 42 U.S.C. § 1983 in four key decisions, beginning with *Preiser v. Rodriguez* in 1973.[23] In *Preiser*, three New York prisoners brought § 1983 actions, combined with petitions for habeas corpus relief, against the New York State Department of Correctional Services.[24] The prisoners sought injunctive relief to restore their good-time credits, which were revoked through allegedly unconstitutional disciplinary proceedings.[25] For each prisoner, a judgment restoring the good-time credits would result in immediate release from prison.[26] The Supreme Court opined that their action "fell squarely within [the] traditional scope of habeas corpus"[27] regardless of whether restoration of the good-time credits resulted in immediate release or simply shortened their confinement.[28] The Court reasoned that exhaustion of state remedies, required by habeas corpus, but not by a § 1983 claim, is "rooted in considerations of federal-state comity,"[29] in which the state's interest is especially strong.[30] Thus, the Court held that when a state prisoner challenges "the very fact or duration of his physical imprisonment . . . his sole federal

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[23] 411 U.S. 475.
[24] *Id.* at 476.
[25] *Id.* "Good time credits" are reductions in an inmate's sentence for good behavior.
[26] *Id.* at 476-77.
[27] *Id.* at 487.
[28] *Id.*
[29] *Id.* at 491.
[30] *Id.*

remedy is a writ of habeas corpus."[31] The *Preiser* decision specifically did not eliminate § 1983 claims, but instead reaffirmed that "a § 1983 action is a proper remedy for . . . a constitutional challenge to the conditions of . . . prison life."[32]

With its decision in *Wolff v. McDonnell*,[33] the Court began to clarify the edges of the intersection between § 1983 and habeas corpus petitions. In *Wolff*, a group of prisoners brought a § 1983 class action suit against a Nebraska state prison "challenging several of the practices, rules, and regulations of the [prison] [c]omplex."[34] The prisoners sought restoration of their good-time credits, but the Court affirmed that *Preiser* properly foreclosed such a § 1983 claim.[35] The prisoners also sought the "submission of a plan by the prison authorities for a hearing procedure in connection with withholding and forfeiture of good time which complied with the requirements of due process; and . . . damages for the deprivation of civil rights resulting from the use of the allegedly unconstitutional procedures."[36] The Supreme Court affirmed the Court of Appeals' decision, holding that the prisoners had cognizable § 1983 claims in their request for procedural modifications and damages.[37]

Heck v. Humphrey,[38] the third significant case heard by the Supreme Court regarding the intersection between habeas and § 1983, began to analyze the subtleties of the potential outcome when a prisoner seeks relief through a § 1983 claim rather than a writ of habeas corpus.[39] In *Heck*,

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[31] *Id.* at 500.
[32] *Id.* at 499.
[33] 418 U.S. 539 (1974).
[34] *Id.* at 542.
[35] *Id.* at 554.
[36] *Id.* at 553.
[37] *Id.* at 579-80.
[38] 512 U.S. 477 (1994).
[39] *Id.* at 480-90.

the prisoner claimed that county prosecutors engaged in an unlawful investigation and destroyed evidence.[40] After the dismissal of his first federal habeas corpus petition and the denial of his second habeas petition, the prisoner filed a § 1983 civil rights claim.[41] As the Seventh Circuit pointed out in its dismissal of his § 1983 claim, and as the Supreme Court affirmed in its holding, if the prisoner is

> challenging the legality of his conviction, so that if he won his case the state would be obliged to release him even if he hadn't sought that relief, the suit is classified as an application for habeas corpus and the plaintiff must exhaust his state remedies, on pain of dismissal if he fails to do so.[42]

Furthermore, the Court clarified dictum in *Preiser*, which indicated that a prisoner's claim for damages could be sought under § 1983.[43] In *Heck*, the Court indicated that if a "claim necessarily demonstrates the invalidity of the conviction . . . the claimant *can* be said to be 'attacking . . . the fact or length . . . of confinement,'" thus resulting in an unacceptable § 1983 suit.[44]

Finally, in *Edwards v. Balisok*,[45] the Court further elaborated on the problem of whether a § 1983 claim attacks a procedure, or whether it instead "impl[ies] the invalidity of the judgment" if it is successful.[46] In *Edwards*, the court held that the prisoner's § 1983 claims for declaratory relief and damages for improper procedures

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[40] *Id.* at 479.
[41] *Id.*
[42] *Id.* at 479-80 (citing Heck v. Humphrey, 997 F.2d 355, 357 (7th Cir. 1993)).
[43] *Id.* at 481 (citing *Preiser*, 411 U.S. at 494).
[44] *Id.* at 481-82 (quoting *Preiser*, 411 U.S. at 490).
[45] 520 U.S. 641 (1997).
[46] *Id.* at 645.

in a disciplinary hearing were non-cognizable because they would render the judgment invalid.[47] However, the prisoner in this case also requested injunctive relief regarding a request for a specific procedural modification, the date-stamping of witness statements.[48] On that claim, the Supreme Court held the claim may be proper under § 1983, and remanded the case for the lower court to decide whether the respondent met all of the other requirements for injunctive relief.[49]

B. Procedural History of *Dotson v. Wilkinson*

In *Dotson v. Wilkinson*, William Dotson and Rogerico Johnson individually brought § 1983 actions in federal district court against the Ohio Department of Rehabilitation and Corrections.[50] Each prisoner sought injunctive and declaratory relief against the procedures used by their respective parole boards, which used guidelines adopted after each prisoner's conviction.[51] In each case, the district court concluded that the claims must be brought through a habeas corpus petition rather than through a § 1983 claim.[52] After the district court's dismissal of the cases as not cognizable under § 1983, the Sixth Circuit consolidated the cases and heard the appeals *en banc*.[53] On appeal, the Sixth Circuit reversed, holding that "procedural challenges to parole eligibility and parole suitability determinations . . . do not 'necessarily imply' the invalidity of the prisoner's conviction or sentence and,

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[47] *Id.* at 648.
[48] *Id.*
[49] *Id.*
[50] *Wilkinson*, 544 U.S. at 77 (discussing Dotson v. Wilkinson, No. 3:00 CV 7303 (N.D. Ohio, Aug. 7, 2000); and Johnson v. Ghee, No. 4:00 CV 1075 (N.D. Ohio, July 16, 2000)).
[51] *Id.*
[52] *Id.*
[53] *Dotson*, 329 F.3d at 470.

therefore, may appropriately be brought as civil rights actions, under 42 U.S.C. § 1983 . . .."[54] The state parole officials petitioned for certiorari, which was granted by the U.S. Supreme Court.[55]

III. Current Case

A. The Issue Presented in *Wilkinson v. Dotson*

In granting review of *Wilkinson*, the Supreme Court evaluated whether a prisoner may pursue relief claims through 42 U.S.C. § 1983 rather than—or in addition to—habeas corpus, where a favorable judgment for the prisoner neither invalidates the state's judgment nor necessarily hastens the prisoner's release from prison.[56] Generally, with a habeas corpus petition, a prisoner must pursue a claim "on the ground that he is in custody in violation of the Constitution,"[57] but may file a § 1983 civil rights claim to challenge the conditions of that confinement.[58] Although a habeas action requires the exhaustion of available state remedies,[59] a §1983 claim does not.[60] Therefore, procedurally, a prisoner may prefer a § 1983 claim to a habeas action.[61]

B. Application of Prior Precedent to *Wilkinson v. Dotson*

In *Wilkinson*, each prisoner challenged the procedures that the state applied to his parole hearing

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[54] *Id.* at 472.
[55] *Wilkinson*, 544 U.S. at 77.
[56] *Id.* at 82.
[57] 28 U.S.C. § 2254(a).
[58] *See Preiser*, 411 U.S. at 475.
[59] 28 U.S.C. § 2254(b).
[60] *See Preiser*, 411 U.S. at 477.
[61] *Wilkinson*, 544 U.S. at 87-88.

instead of challenging the parole board decisions.[62] For Dotson, a successful claim would have resulted in "at most new eligibility review, which at most [would] speed *consideration* of a new parole application."[63] For Johnson, a successful claim would have resulted in "at most a new parole hearing at which Ohio parole authorities may [have], in their discretion, decline[d] to shorten his prison term."[64] As evaluated by the majority, neither prisoner challenged the duration nor the legality of his confinement.[65] Furthermore, a favorable judgment for the prisoners would not have necessarily affected the duration of their confinement.[66] Thus, the Court observed that "neither [prisoner's claim] lies at 'the core of habeas corpus.'"[67] In an eight to one decision, the Court affirmed the Sixth Circuit's decision and remanded the case for further proceedings.[68]

IV. Prisoner Requests for Relief v. Prisoner Hopes for Release

A. The Prisoner is the Master of his Lawsuit[69]

In *Wilkinson*, the Court astutely weighed the importance of addressing prisoners' actual claims rather than accepting the state's presumption that the prisoners brought these cases "only because they believe[d] that

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[62] *Id.* at 82.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.* (quoting *Preiser*, 411 U.S. at 489).
[68] *Id.* at 85.
[69] The origins of the frequently used phrase, "A plaintiff is the master of his lawsuit," are uncertain. I have intentionally misquoted this phrase to emphasize that prisoners, like all other plaintiffs, have control over the relief requested in their legal challenges as a result of the holding in the *Wilkinson* case.

victory on their claims [would] lead to speedier release from prison."[70] For the purpose of a fair judgment on the merits of a case, the state's assumption that the prisoner *hopes* that his legal claims will result in a reduced sentence is both irrelevant and speculative. The holding in *Wilkinson* indicates that a deciding factor between a cognizable § 1983 claim and one which must be brought under habeas is the actual relief sought, rather than the remote and uncertain consequences of a favorable judgment. The *possibility* of earlier release from a parole hearing "is too tenuous here to achieve [the state's] legal door-closing objective."[71]

In the majority opinion of *Wilkinson*, Justice Breyer writes: "The problem with Ohio's argument lies in its jump from a true premise (that in all likelihood the prisoners hope these actions will help bring about earlier release) to a faulty conclusion (that habeas is their sole avenue for relief)."[72] Prisons, by their nature and design, are an undesirable place to reside. More than most institutions, the prison community relies on clearly established rules and regulations, along with a series of administrative and legal checks and balances, to function properly. To increase prisoner obedience to expressions of authority, the state offers parole and early release for prisoners' good behavior and withholds parole for disciplinary problems.[73] To challenge the state's authority over the conditions and procedures of their confinement, prisoners may appropriately seek relief through civil rights claims, especially under 42 U.S.C. § 1983.[74] Although the

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[70] *Id.* at 78.
[71] *Id.*
[72] *Id.*
[73] *See generally Edwards*, 520 U.S. 641 (discussing the revocation of good-time credits for alleged disciplinary infractions); *Wolff*, 418 U.S. 539 (discussing prisoners' loss of good-time credits for serious misconduct).
[74] *Id.*

prisoners in *Wilkinson* may hope their good behavior will be rewarded with earlier freedom, their § 1983 challenges to the application of harsher parole guidelines merely seek to reign in the elusive "carrot" held out by the state for good behavior.

In Justice Kennedy's dissenting opinion, he argues that the "inconsistency in the Court's treatment of sentencing proceedings and parole proceedings is . . . difficult to justify. It is, furthermore, in tension with our precedents."[75] Sentencing decisions, unlike parole procedures, specifically address the duration of confinement. Like the prisoners in *Wolff*, Johnson and Dotson sought injunctive and declaratory relief against the unconstitutional procedures of their confinement, which could remotely, but not necessarily, affect the length of their sentences.[76] Although Kennedy's lone dissent expresses a valid argument for consistency in decisions, it misses the mark on the importance of the *Wilkinson* decision. The majority wisely recognizes that, although we may logically presume that all prisoners aspire to freedom, the constitutionality of their confinement—in this case, their parole proceedings—needs to be protected in the meantime.

B. *Wilkinson* Reinforces the *Preiser* Standard

Rather than being in tension with the Court's earlier decisions, the holding of *Wilkinson* reinforced the need to closely examine the specific relief sought by a prisoner in a § 1983 civil rights claim. This case clarified the rules for interpreting the precedent set in *Preiser*—that prisoners must use habeas actions for "challenging the very fact or

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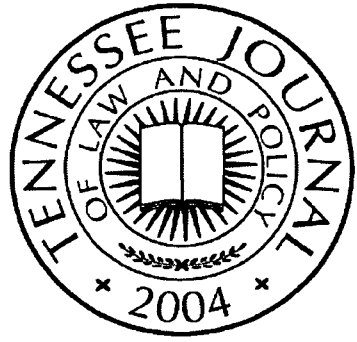
[75] *Wilkinson*, 544 U.S. at 88 (Kennedy, J., dissenting) ("Challenges to parole proceedings are cognizable in habeas.").
[76] *Id.* at 81-82.

duration of [their] physical imprisonment."[77] Yet, *Wilkinson* also reinforced the notion that prisoners have an enforceable right to constitutional conditions and procedures during their confinement. This case clarified the often fuzzy intersection between habeas petitions and § 1983 claims, while acknowledging that the prisoner *has the right to be* the master of his own lawsuit.

[77] *Preiser*, 411 U.S. at 500.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