


IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE DORSEY,
Appellant,
vs.
THE STATE OF NEVADA; COUNTY OF
WASHOE; COUNTY OF CLARK; CITY
OF RENO; AND CITY OF LAS VEGAS,
Respondents.

No. 43654

FILED

MAR 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's civil rights action. First Judicial District Court, Carson City; William A. Maddox, Judge.

On January 20, 2004, appellant Kenneth Dorsey filed a civil complaint under Title II of the Civil Rights Act of 1964,¹ seeking an injunction to enjoin the application of Nevada's burglary statute (NRS 205.060(1)) to him and others similarly situated. According to Dorsey's complaint, "open to public" burglary charges are racially motivated in light of evidence that Caucasians who commit or attempt to commit larceny, in places that are open to the public during normal business hours, are not charged with felony burglary, but rather misdemeanor petty thefts, while African-Americans who engage in the same conduct are charged with felony burglary. Dorsey, who was arrested in 1991, 1994, and 1997 for burglary, and later convicted, sought to enjoin the enforcement of NRS 205.060(1), and a declaration that all prosecutions, convictions, and sentences under the statute are invalid.

¹See 42 U.S.C. § 2000a to 2000a-6 (2000).

The respondents moved the district court to dismiss the action on the basis that, among other things, Dorsey was precluded from pursuing his claims by the statute of limitations, res judicata, and that habeas relief is a prerequisite to civil litigation.² The district court granted this motion and entered an order dismissing Dorsey's complaint. According to the district court, the statute of limitations on Dorsey's civil rights claim arising out of his arrests, prosecutions, and convictions on his burglary offenses had run. The district court further found that res judicata applied and precluded Dorsey from advancing the same legal theories addressed in his 1998 federal action. The court also observed that habeas relief invalidating a criminal sentence must precede any civil rights action. Dorsey appeals.

Our review of the order dismissing Dorsey's complaint is rigorous,³ as this court, in determining whether Dorsey set forth allegations sufficient to make out a right to relief,⁴ accepts all factual allegations in his complaint as true and construes all reasonable inferences in his favor.⁵ The dismissal of Dorsey's action against respondents was proper only if his allegations, as presumed true, would not entitle him to relief.⁶

²Heck v. Humphrey, 512 U.S. 477 (1994).

³Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

⁴Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

⁵Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

⁶Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

Here, the district court dismissed Dorsey's action after finding that his claims were barred by the statute of limitations, res judicata principles, and under the United States Supreme Court's decision in Heck v. Humphrey.⁷ Dorsey's claims, however, may not have been untimely, since he only sought injunctive relief, and could not recover damages under 42 U.S.C. § 2000a, the statute under which he brought his claims.⁸ Likewise his claims may not have been barred under Heck, since Heck applies to preclude damages claims, which, if successful, would implicate the validity of a conviction or sentence that has not been otherwise invalidated through a writ of habeas corpus.⁹

Nevertheless, we conclude that the district court properly dismissed Dorsey's complaint under the doctrine of res judicata, since Dorsey had previously advanced, before the United States District Court, and for which there was a final judgment, claims concerning the same

⁷512 U.S. 477.

⁸See Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) (explaining that Title II plaintiffs may not recover damages); 42 U.S.C. § 2000a-3(a), 2000a-6(b) (providing that alleged violations of Title II may be remedied through an action for preventative relief, which is the exclusive remedy for enforcing the rights defined in § 2000a); see also Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946) ("Traditionally and for good reasons, statues of limitation are not controlling measures of equitable relief."); Jackson v. Waffle House, Inc., 413 F. Supp. 2d 1338, 1362 (N.D. Ga. 2006) (recognizing that, because only equitable relief is available under § 2000a, no statute of limitations applied to appellant's § 2000a claims, but the equitable defense of laches could serve to bar those claims); Mussington v. St. Luke's-Roosevelt Hosp. Center, 824 F. Supp. 427, 433 n.4 (S.D.N.Y. 1993) (same).

⁹512 U.S. at 486.

arrests, prosecutions, and convictions that he challenged in the present action.¹⁰

Moreover, even if not barred by *res judicata* principles, dismissal was appropriate, as Dorsey's complaint failed to assert facts that would support his Title II claim. Title II prohibits discrimination in places of public accommodation on the basis of race, and provides that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation."¹¹ Dorsey's complaint fails to allege a single fact that would support that the respondents denied him the full and equal enjoyment of a place of public accommodation on account of his race.¹² There is no basis for the proposition that a state criminal arrest or prosecution is a "benefit" or "service," or for that matter a "public


¹⁰See Lytle v. Household Mfg., Inc., 494 U.S. 545, 552 (1990) (recognizing that a plaintiff generally is "required to join his legal and equitable claims to avoid the bar of *res judicata*"); 18 James Wm. Moore, et al., Moore's Federal Practice, § 131.21[4] (3d ed. 2006) (explaining that all available legal and equitable relief resulting from a transaction or series of transactions "constitutes a single claim," and, therefore, as a general rule, the plaintiff must seek all available relief in the first action, because a judgment in that action bars a second suit seeking additional relief).

¹¹42 U.S.C. § 2000a.


¹²See Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 250 (1964) (noting that Title II's fundamental objective is to vindicate the deprivation of personal dignity that accompanies denials of equal access to public establishments); see also Solomon v. Waffle House, Inc., 365 F. Supp. 2d 1312, 1331 (N.D. Ga. 2004) (noting that, in order to establish a claim under Title II, the plaintiff must show, among other things, that he (1) attempted to contract for services and afford himself of the full benefits and enjoyment of a public accommodation, and (2) was denied the full benefit or enjoyment of a public accommodation).

accommodation” under Title II,¹³ and the district court properly dismissed it.¹⁴ Thus, as he was not deprived of any right or privilege guaranteed by the Constitution or the laws of the United States, Dorsey’s complaint failed to state a claim under Title II. Accordingly, we

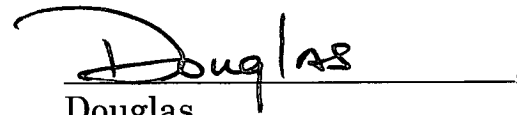
ORDER the judgment of the district court AFFIRMED.


_____, C.J.

Maupin


_____, J.

Gibbons


_____, J.

Douglas

cc: Hon. William A. Maddox, District Judge
Kenneth Wayne Dorsey
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger/Civil Division
Las Vegas City Attorney
Reno City Attorney
Washoe County District Attorney Richard A. Gammick
Carson City Clerk

¹³See Greenwood v. Peacock, 384 U.S. 808, 826-27 (1966) (recognizing that no federal law confers an absolute right on private citizens to commit a crime and no federal law confers immunity from state prosecution on criminal charges).

¹⁴Rosenstein v. Steele, 103 Nev. 571, 747 P.2d 230 (1987) (explaining that this court will affirm a district court order if the district court reached the correct result, even if, for different reasons).