SUPREME COURT OF THE UNITED STATES

No. 96–7171

RANDY G. SPENCER, PETITIONER *v.* MIKE KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[March 3, 1998]

JUSTICE SOUTER, with whom JUSTICE O'CONNOR, JUSTICE GINSBURG, and JUSTICE BREYER join, concurring.

I join the Court's opinion as well as the judgment, though I do so for an added reason that the Court does not reach, but which I spoke to while concurring in a prior case. One of Spencer's arguments for finding his present interest adequate to support continuing standing despite his release from custody is, as he says, that he may not now press his claims of constitutional injury by action against state officers under 42 U. S. C. §1983. He assumes that *Heck* v. *Humphrey*, 512 U. S. 477 (1994), held or entails that conclusion, with the result that holding his habeas claim moot would leave him without any present access to a federal forum to show the unconstitutionality of his parole revocation. If Spencer were right on this point, his argument would provide a reason, whether or not dispositive, to recognize continuing standing to litigate his habeas claim. But he is wrong; *Heck* did not hold that a released prisoner in Spencer's circumstances is out of court on a §1983 claim, and for reasons explained in my *Heck* concurrence, it would be unsound to read either *Heck* or the habeas statute as requiring any such result. For all that appears here, then, Spencer is free to bring a §1983 action, and his

corresponding argument for continuing habeas standing falls accordingly.

The petitioner in *Heck* was an inmate with a direct appeal from his conviction pending, who brought a §1983 action for damages against state officials who were said to have acted unconstitutionally in arresting and prosecuting him. Drawing an analogy to the tort of malicious prosecution, we ruled that an inmate's §1983 claim for damages was unavailable because he could not demonstrate that the underlying criminal proceedings had terminated in his favor.

To be sure, the majority opinion in *Heck* can be read to suggest that this favorable-termination requirement is an element of any §1983 action alleging unconstitutional conviction, whether or not leading to confinement and whether or not any confinement continued when the §1983 action was filed. *Heck, supra*, at 483–484, 486–487. Indeed, although *Heck* did not present such facts, the majority acknowledged the possibility that even a released prisoner might not be permitted to bring a §1983 action implying the invalidity of a conviction or confinement without first satisfying the favorable-termination requirement. *Id.*, at 490, n. 10.

Concurring in the judgment in *Heck*, I suggested a different rationale for blocking an inmate's suit with a requirement to show the favorable termination of the underlying proceedings. In the manner of *Preiser* v. *Rodriguez*, 411 U. S. 475 (1973), I read the "general" §1983 statute in light of the "specific" federal habeas statute, which applies only to persons "in custody," 28 U. S. C. §2254(a), and requires them to exhaust state remedies, §2254(b). *Heck, supra*, at 497 (SOUTER, J., concurring in judgment). I agreed that "the statutory scheme must be read as precluding such attacks," *id.*, at 498, not because the favorable-termination requirement was necessarily an element of the §1983 cause of action for unconstitutional

conviction or custody, but because it was a "simple way to avoid collisions at the intersection of habeas and §1983." *Ibid.*

I also thought we were bound to recognize the apparent scope of §1983 when no limitation was required for the sake of honoring some other statute or weighty policy, as in the instance of habeas. Accordingly, I thought it important to read the Court's *Heck* opinion as subjecting only inmates seeking §1983 damages for unconstitutional conviction or confinement to "a requirement analogous to the malicious-prosecution tort's favorable termination requirement," *id.*, at 500, lest the plain breadth of §1983 be unjustifiably limited at the expense of persons not "in custody" within the meaning of the habeas statute. The subsequent case of *Edwards* v. *Balisok*, 520 U. S. ___ (1997), was, like *Heck* itself, a suit by a prisoner and so for present purposes left the law where it was after *Heck*. Now, as then, we are forced to recognize that any application of the favorable-termination requirement to §1983 suits brought by plaintiffs not in custody would produce a patent anomaly: a given claim for relief from unconstitutional injury would be placed beyond the scope of §1983 if brought by a convict free of custody (as, in this case, following service of a full term of imprisonment), when exactly the same claim could be redressed if brought by a former prisoner who had succeeded in cutting his custody short through habeas.*

The better view, then, is that a former prisoner, no longer "in custody," may bring a §1983 action establishing the unconstitutionality of a conviction or confinement

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*The convict given a fine alone, however onerous, or sentenced to a term too short to permit even expeditious litigation without continuances before expiration of the sentence, would always be ineligible for § 1983 relief. See *Heck* v. *Humphrey*, 512 U. S. 477, 500 (1994) (SOUTER, J., concurring in judgment).

without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy. Thus, the answer to Spencer's argument that his habeas claim cannot be moot because *Heck* bars him from relief under §1983 is that *Heck* has no such effect. After a prisoner's release from custody, the habeas statute and its exhaustion requirement have nothing to do with his right to any relief.