

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

FILED
BILLINGS DIV.
2010 JAN 22 PM 2 25
PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

JEREMY RASKIEWICZ,)
) CV-09-16-BU-RFC
 Plaintiff,)
 vs.)
) ORDER ADOPTING FINDINGS
 MENTAL HEALTH SERVICES) AND RECOMMENDATIONS OF
 OF MONTANA; UNITED STATES) U.S. MAGISTRATE JUDGE
 DISTRICT COURT, DISTRICT OF)
 MONTANA (AS FEDERAL ENTITY);)
 DR. RUTH LEE; AND)
 COMMUNITY HEALTH CENTER,)
 BUTTE, MONTANA,)
)
 Defendants.)
 _____)

On October 28, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 7*) with respect to Plaintiff's Amended Complaint. Magistrate Judge Ostby recommends that Plaintiff's Complaint and Amended Complaint be dismissed.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff filed an objection on November 25, 2009. Plaintiff's objections require

this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well taken.

After a *de novo* review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

In his Amended Complaint, Plaintiff alleges his civil right to petition the government were violated on February 13, 2009, when document entitled "Notice and Petition" was returned to him not filed. He also complains he was referred to as having a mental illness at a March 4, 2008, restitution hearing based upon the introduction of medical records, without consent, from Community Health Center and Mental Health Services. His allegations are construed as a claim that his rights were violated when the alleged misdiagnosis of a mental illness was utilized in court and thus violated his right to petition the government for redress of a grievance.

"The United States, including its agencies and its employees, can be sued only to the extent that it has expressly waived its sovereign immunity." *Kaiser v. Blue Cross of California*, 347 F.3d 1107, 1117 (9th Cir. 2003) (citing *United States v. Testan*, 424 U.S. 392, 399 (1976)). The United States has not waived its

sovereign immunity. All claims against the United States District Court are dismissed with prejudice.

Plaintiff also appears to be seeking to challenge his conviction or sentence and such claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Plaintiff's conviction and sentence has not been reversed, declared invalid, expunged, or called into question and therefore he cannot challenge his conviction in a civil action brought pursuant to 42 U.S.C. § 1983. Any allegation regarding the use of his medical records affecting his criminal proceedings fails to state a claim upon which relief may be granted.

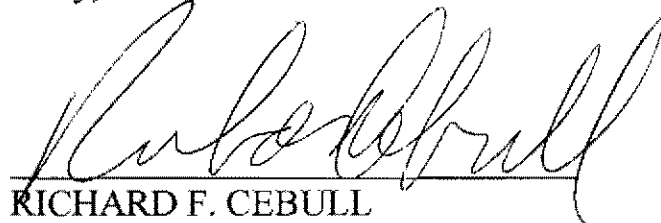
Finally, Plaintiff's allegations regarding future disclosures of his mental health records are speculative and there is no allegation that any future disclosure of mental health records is imminent. As such, these allegations fail to state a claim upon which relief may be granted.

Therefore, IT IS HEREBY ORDERED as follows:

1. Plaintiff's Complaint and Amended Complaint are DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.
2. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58, F.R.Civ.P.

3. The Clerk of Court is directed to have the docket reflect that the dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Plaintiff failed to state a claim upon which relief may be granted.
4. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 27th day of January, 2010.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE