

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

DONALD P. ROGERS,

Plaintiff,

vs.

DEPUTY KING, DEPUTY BURT, ASS.
DEPUTY COUNTY ATTORNEY JASON
TROY MARKS, CHIEF COUNTY
ATTORNEY FRED VAN VALKENBURG,
CITY OF MISSOULA JUDICIAL COURT
SYSTEM, and the COUNTY OF
MISSOULA,

Defendants.

CV 13-00163-M-DWM-JCL

ORDER

FILED

NOV 18 2015

Clerk, U.S. District Court
District Of Montana
Missoula

Donald Rogers, appearing pro se, brings this action under 42 U.S.C. § 1983, alleging violations of his federal Constitutional rights during the course of a criminal proceeding brought against him by the State of Montana. Magistrate Judge Jeremiah Lynch recommends Rogers' complaint be dismissed. (Doc. 23.) As Rogers has not filed objections to Judge Lynch's Findings and Recommendations, they are reviewed for clear error. *McDonnell Douglas Corp. v. Commodor Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has

been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After consideration of the five factors delineated in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992), no clear error exists with Judge Lynch’s determination that Rogers’ claims should be dismissed pursuant to Rule 41(b) for failure to comply with court orders.

Additionally, no clear error exists in Judge Lynch’s determination that Rogers’ claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). That case prevents challenges to the validity of a conviction or sentence if that conviction or sentence has not been reversed, declared invalid, expunged, or called into question.

Accordingly, IT IS ORDERED that the Findings and Recommendations (Doc. 23) are ADOPTED IN FULL. Rogers’ Complaint (Doc. 2) is DISMISSED.

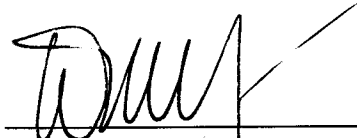
IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Rogers has failed to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Fed. R. App. P. Rule 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 and lacks arguable substance in law or fact.

DATED this 18th day of November, 2015.



Donald W. Molloy, District Judge
United States District Court

