

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

**KEITH ELDRED COLEY
ADC #094008**

PLAINTIFF

V.

Case No. 4:14-CV-00095 KGB

JERRY LLEWELLYN, ET AL.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge H. David Young (Dkt. No. 5) and the objections filed by plaintiff Keith Eldred Coley (Dkt. No. 7). After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

The Court writes separately to address Mr. Coley's objections. Mr. Coley argues that his "sentence is called into question by [a] writ [of *habeas corpus*]" (Dkt. No. 7) and, therefore, that the Court should not dismiss his claims for damages for his allegedly unconstitutional conviction and imprisonment. Although Mr. Coley filed a writ of *habeas corpus* questioning his sentence, that writ was dismissed with prejudice in federal court. *Coley v. Ark. Dep't of Correction, et al.*, Case No. 5:14-cv-00018 (E.D. Ark. April 23, 2014). Accordingly, Mr. Coley's complaint here should be dismissed. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) ("We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment ... a §1983 plaintiff must prove that the conviction or sentence has been ... called into question by a federal court's issuance of a writ of *habeas corpus*.").

After filing his objections to the Proposed Findings and Recommendations, Mr. Coley filed a motion to amend his complaint (Dkt. No. 10). Mr. Coley's motion to amend his complaint makes no new allegations; instead, it repeats his previous claims concerning his conviction and sentencing. Therefore, the Court denies Mr. Coley's motion to amend his complaint for the same reasons it has dismissed his complaint. Mr. Coley also filed a motion to appoint counsel (Dkt. No. 6). That motion is denied as moot.

It is therefore ordered that:

1. Mr. Coley's complaint is dismissed without prejudice for failure to state a claim upon which relief may be granted.
2. Mr. Coley's motion to amend his complaint is denied (Dkt. No. 10).
3. Mr. Coley's motion to appoint counsel is denied as moot (Dkt. No. 6).
4. This dismissal of Mr. Coley's complaint counts as a "strike" for purposes of 28 U.S.C. § 1915(g).
5. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

SO ORDERED this 3rd day of November, 2014.



Kristine G. Baker
United States District Judge