

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAMON LUPERCIO,	CASE NO. 1:10-cv-02314-AWI-GBC (PC)
Plaintiff,	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSING ACTION WITHOUT PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED UNDER SECTION 1983
v.	
VISALIA POLICE DEPARTMENT, et al.,	
Defendants.	(Doc. 1)

I. Screening Order

Plaintiff Ramon Lupercio (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on December 13, 2010. Plaintiff is seeking declaratory relief and money damages arising out of the alleged conspiracy to wrongfully convict Plaintiff. (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

When a prisoner challenges the legality or duration of his custody, or raises a constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a writ of habeas corpus. *Wilkinson v. Dotson*, 544 U.S. 74, 125 S.Ct. 1242, 1245-48 (2005); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990). Moreover, when seeking relief

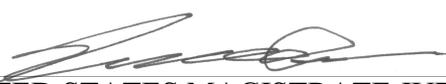
1 for an allegedly unconstitutional conviction or imprisonment, “a § 1983 plaintiff must prove that the
2 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
3 invalid by a state tribunal authorized to make such determination, or called into question by a federal
4 court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477,
5 487-88 (1994). “A claim . . . bearing that relationship to a conviction or sentence that has not been
6 so invalidated is not cognizable under § 1983.” *Id.* at 488.

7 Plaintiff is challenging allegedly false statements that were given to the trial court that
8 ultimately led to Plaintiff’s conviction. Plaintiff may not at this time bring a civil rights action
9 arising from these events. Plaintiff’s sole remedy is to file a petition for writ of habeas corpus.
10 Accordingly, the court HEREBY RECOMMENDS that this action be DISMISSED, without
11 prejudice, for failure to state a claim upon which relief may be granted under section 1983.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty**
14 **(30) days** after being served with these Findings and Recommendations, plaintiff may file
15 written objections with the court. The document should be captioned “Objections to Magistrate
16 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections
17 within the specified time may waive the right to appeal the District Court’s order. *Martinez v.*
18 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19
20
21 IT IS SO ORDERED.

22 Dated: May 5, 2011


UNITED STATES MAGISTRATE JUDGE