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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEROME LEE CROSS,
Plaintiff,
v.
KINGS COUNTY SHERIFF DEPT., et
al.,
Defendants.

Case No. 1:14-cv-01253-JLT (PC)
**ORDER TO SHOW CAUSE WHY THIS
ACTION SHOULD NOT BE DISMISSED AS
BARRED BY HECK V. HUMPHRY, 512 U.S. 477
(1994)**
(Docs. 1)
30-DAY DEADLINE

Plaintiff, Jerome Lee Cross, appears to be a county jail detainee¹ who is currently proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's Complaint alleges that he was arrested based on racial profiling, that he is being "held a captive," that he was "falsely arrested," and that he wants the District Attorney's Office to make full compensation for depriving him of his freedom. (Doc. 1, p. 3.) It appears that Plaintiff may have intended to pursue habeas corpus relief, rather than an action under §1983.

When a plaintiff 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. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an

¹ Plaintiff states that he has had two preliminary hearings and one trial that resulted in a hung jury, that charges were dismissed in August of 2013, but were refiled in December of 2013, and that to date he remains in custody. (Doc. 1, p. 3.)

1 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
4 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512
5 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or
6 sentence that has not been so invalidated is not cognizable under § 1983." Id. at 488.

7 While Plaintiff alleges that he has not been convicted, the Complaint does not contain any
8 allegations to show that the basis of Plaintiff's confinement has been reversed, expunged, declared
9 invalid, or called into question by a writ of habeas corpus. It appears that Plaintiff's intent in
10 filing this action is for habeas corpus relief rather than to pursue claims under § 1983.

11 Accordingly, it is HEREBY ORDERED that **within thirty days** from the date of service
12 of this order, Plaintiff shall show cause in writing why this action should not be dismissed as
13 barred by Heck v. Humphrey, 512 U.S. 477 (1994).

14 **The failure to respond to this order will result in dismissal of this action, without**
15 **prejudice.**

16
17 IT IS SO ORDERED.

18 Dated: August 21, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE