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| 8 | UNITED STATES DISTRICT COURT | |
| 9 | EASTERN DISTRICT OF CALIFORNIA | |
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| 11 | GARY HODGE, | Case No. 1:16-cv-00001-DAD-JLT (PC) |
| 12 | Plaintiff, | ORDER TO SHOW CAUSE WHY THIS |
| 13 | v. | ACTION SHOULD NOT BE DISMISSED AS BARRED BY <i>HECK V. HUMPHRY</i> , 512 U.S. 477 (1994) and <i>EDWARDS v. BALISOK</i> , 520 |
| 14 | GARZA, et al., | U.S. 641 (1997). |
| 15 | Defendants. | (Docs. 1) |
| 16 | | 30 DAY DEADLINE |
| 17 | Gary Hodge complains that prison officials found him guilty of a serious prison rules | |
| 18 | violation. (Doc. 1.) The violation claimed he possessed a cell phone but he asserts that the phone | |
| 19 | was not his. <u>Id</u> . Plaintiff alleges that he is completely innocent of this charge; that he was not | |
| 20 | allowed to introduce evidence of his cell-mate's admission of ownership or other exculpatory | |
| 21 | evidence; that the defendants refused to reverse the guilty finding; and that this guilty finding lead | |
| 22 | to a lengthening of his sentence. Plaintiff seeks an order reversing all punitive effects of the | |
| 23 | SRVR finding from his record. | |
| 24 | When a prisoner challenges the legality or duration of his custody, or raises a | |
| 25 | constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a | |
| 26 | writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 | |
| 27 | (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an | |
| 28 | allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the | |
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| 1 | conviction or sentence has been reversed on direct appeal, expunged by executive order, declared | |
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| 2 | invalid by a state tribunal authorized to make such determination, or called into question by a | |
| 3 | federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 | |
| 4 | U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or | |
| 5 | sentence that has not been so invalidated is not cognizable under § 1983." Id. at 488. This | |
| 6 | "favorable termination" requirement has been extended to actions under § 1983 that, if successful, | |
| 7 | would imply the invalidity of prison administrative decisions which result in a forfeiture of good- | |
| 8 | time credits. Edwards v. Balisok, 520 U.S. 641, 643-647 (1997). | |
| 9 | The complaint does not contain any allegations to show that Plaintiff's finding of guilt | |
| 10 | under the SRVR has been reversed, expunged, declared invalid, or called into question by a writ | |
| 11 | of habeas corpus. To the contrary, the very relief he seeks is to have the guilty finding set aside. | |
| 12 | Accordingly, it is HEREBY ORDERED that within 30 days from the date of service of | |
| 13 | this order, Plaintiff shall show cause in writing why this action should not be dismissed as barred | |
| 14 | by Heck v. Humphrey, 512 U.S. 477 (1994) and Edwards v. Balisok, 520 U.S. 641, 643–647 | |
| 15 | (1997). Failure to respond to this order will result in dismissal of this action, without | |
| 16 | prejudice. | |
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| 18 | IT IS SO ORDERED. | |
| 19 | Dated: April 5, 2016 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE | |
| 20 | UNITED STATES MADISTRATE JUDGE | |
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