# UNITED STATES DISTRICT COURT 

EASTERN DISTRICT OF CALIFORNIA

GARY HODGE,
Plaintiff,
v.

GARZA, et al.,
Defendants.

Gary Hodge complains that prison officials found him guilty of a serious prison rules violation. (Doc. 1.) The violation claimed he possessed a cell phone but he asserts that the phone was not his. Id. Plaintiff alleges that he is completely innocent of this charge; that he was not allowed to introduce evidence of his cell-mate's admission of ownership or other exculpatory evidence; that the defendants refused to reverse the guilty finding; and that this guilty finding lead to a lengthening of his sentence. Plaintiff seeks an order reversing all punitive effects of the SRVR finding from his record.

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. 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 allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the
conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." Id. at 488. This "favorable termination" requirement has been extended to actions under § 1983 that, if successful, would imply the invalidity of prison administrative decisions which result in a forfeiture of goodtime credits. Edwards v. Balisok, 520 U.S. 641, 643-647 (1997).

The complaint does not contain any allegations to show that Plaintiff's finding of guilt under the SRVR has been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus. To the contrary, the very relief he seeks is to have the guilty finding set aside.

Accordingly, it is HEREBY ORDERED that within $\mathbf{3 0}$ days from the date of service of this order, Plaintiff shall show cause in writing why this action should not be dismissed as barred by Heck v. Humphrey, 512 U.S. 477 (1994) and Edwards v. Balisok, 520 U.S. 641, 643-647 (1997). Failure to respond to this order will result in dismissal of this action, without prejudice.

## IT IS SO ORDERED.

Dated: April 5, 2016
/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

