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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 EDWARD V. RAY, JR.,

No. C 10-823 SI (pr)

9 Plaintiff,

**ORDER OF DISMISSAL**

10 v.

11 SABRINA R. FARRELL,  
12 Deputy District Attorney of  
Alameda County; et al.,

13 Defendants.  
14 \_\_\_\_\_/

15 **INTRODUCTION**

16 Edward V. Ray, Jr., a California prisoner currently housed at an out-of-state correctional  
17 institution in Tutwiler, Mississippi, filed a pro se civil complaint. His complaint is now before  
18 the court for review under 28 U.S.C. § 1915A.  
19

20 **BACKGROUND**

21 In his complaint, Ray alleges that the deputy district attorney who prosecuted him  
22 engaged in prosecutorial misconduct by withholding exculpatory evidence and depriving him  
23 of his Sixth Amendment right to confront a witness. He also conclusorily alleges that the deputy  
24 D.A. is in a conspiracy with Oakland police sergeant to suppress evidence. In an attachment to  
25 the complaint, he states that he is in prison as a result of the criminal charges and is awaiting his  
26 release via his appeal.  
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28



1 challenge the conviction or other decision -- would imply that the conviction or other decision  
2 was invalid. The practical importance of this rule is that a plaintiff cannot attack his conviction  
3 in a civil rights action for damages; the decision must have been successfully attacked before the  
4 civil rights action for damages is filed. The Heck rule was first announced with respect to an  
5 action for damages, but the Supreme Court has since applied the rule to an action that sought  
6 declaratory relief as well as damages. See Edwards v. Balisok, 520 U.S. 641, 648 (1997). That  
7 Heck applies to both damages and equitable relief was further clarified in Wilkinson v. Dotson,  
8 544 U.S. 74, 81-82 (2005). Whether the Heck rule applies requires one to consider whether  
9 success in the §1983 action would "necessarily demonstrate the invalidity of the confinement  
10 or its duration." Id. at 82. If so, the § 1983 action is barred no matter the relief sought (i.e.,  
11 damages or equitable relief) as long as the conviction has not been set aside.

12 Ray claims that the prosecutor violated his constitutional rights in connection with his  
13 criminal trial by withholding exculpatory evidence and by depriving him of the opportunity to  
14 confront a witness. The claims are squarely within the Heck rule because success on them  
15 would call into question the validity of his conviction that is now in place. Heck requires the  
16 dismissal of the claims.

17 The prosecutor also would have absolute immunity against a claim for damages for any  
18 claim that is based on her conduct as an advocate in the criminal case. See Buckley v.  
19 Fitzsimmons, 509 U.S. 259, 272-73 (1993); Imbler v. Pachtman, 424 U.S. 409, 431 (1976).  
20 There are not enough details in the complaint to determine at this stage whether the prosecutor  
21 would have absolute immunity from claims for damages pertaining to the alleged withholding  
22 of evidence and the conspiracy with a police officer to withhold evidence, but the court need not  
23 allow further development of the record to decide the prosecutorial immunity question because  
24 the Heck bar prevents this action from going forward at this time. The prosecutorial immunity  
25 question can be reached, if at all, if plaintiff ever has his conviction set aside and files a new  
26 action for damages.

27 A petition for writ of habeas corpus is the exclusive method by which a person may  
28 challenge in this court the fact or duration of his confinement. See Preiser v. Rodriguez, 411

1 U.S. 475, 500 (1973). Ray has filed a petition for writ of habeas corpus that is now pending, see  
2 Ray v. Cate, No. C 10-1582 SI.

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4 **CONCLUSION**

5 For the foregoing reasons, this action is DISMISSED. This dismissal is without prejudice  
6 to plaintiff filing a new action if his criminal conviction is ever set aside. The clerk shall close  
7 the file.

8 IT IS SO ORDERED.

9 Dated: September 1, 2010

  
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10 SUSAN ILLSTON  
11 United States District Judge  
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