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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 10-895 SI (pr)

9 Plaintiff,

ORDER OF DISMISSAL

10 v.

11 CAESAR BASA, sergeant,
12 Oakland Police Department,

13 Defendant.
14

INTRODUCTION

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

19 **BACKGROUND**

20 In his complaint, Ray alleges that defendant Oakland police sergeant Basa conducted a
21 line-up in which Ray was among the persons viewed as suspects in a series of robberies. He
22 alleges that "this line-up was held without counsel present" in violation of his right to counsel
23 at this critical stage of the prosecution. Complaint, p. 2. Ray further alleges that during his trial,
24 another "'takeover robbery'" with the same modus operandi as the ones he was charged with
25 occurred. "Sergeant Basa was well aware of the robbery but failed to disclose this evidence to
26 the defense." Id. This allegedly violated Ray's right to due process and a fair trial.
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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 defendant deprived him of his Sixth Amendment right to counsel at
13 a critical stage of the prosecution when he conducted the lineup and that he failed to disclose
14 exculpatory evidence at the trial. The claims are squarely within the Heck rule because success
15 on them would call into question the validity of his conviction that is now in place. Heck
16 requires the dismissal of the claims.

17 A petition for writ of habeas corpus is the exclusive method by which a person may
18 challenge in this court the fact or duration of his confinement. See Preiser v. Rodriguez, 411
19 U.S. 475, 500 (1973). Ray has filed a petition for writ of habeas corpus that is now pending, see
20 Ray v. Cate, No. C 10-1582 SI.

21
22 **CONCLUSION**

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

26 IT IS SO ORDERED.

27 Dated: September 1, 2010

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SUSAN ILLSTON
United States District Judge