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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD V. RAY, JR.,
Plaintiff,

No. C 10-1107 SI (pr)

ORDER OF DISMISSAL

v.

JEREMY FRIEDLANDER,
Deputy California Attorney General,
Defendant.

_____ /

INTRODUCTION

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

BACKGROUND

In his complaint, Ray alleges that the deputy Attorney General who wrote the respondent's brief in his criminal appeal misstated the evidence. This allegedly violated Ray's Fourteenth Amendment right to due process and amounted to felony falsification of evidence. In the brief he wrote for the California Court of Appeal, defendant "did 'willfully' change testimony in order to get the Court of Appeal to uphold an illegal sentence." Complaint, p. 3.

1 dismissed because it is legally meritless.

2 Even if the defendant did not have absolute prosecutorial immunity, the action would be
3 barred by the rule in Heck v. Humphrey, 512 U.S. 477 (1994) insofar as plaintiff seeks damages
4 against the defendant. That rule – explained in more detail in the Order of Dismissal in Ray v.
5 Farrell, C 10-823 SI – generally precludes a prisoner-plaintiff from obtaining damages in a §
6 1983 action for alleged constitutional violations in connection with his criminal trial as long as
7 the conviction remains in place. Plaintiff's claim that the defendant wrote an appellate brief on
8 behalf of the People of the State of California seeking to have plaintiff's criminal conviction
9 upheld that falsified evidence would, if it succeeded, squarely call into question the validity of
10 plaintiff's conviction. Normally, Heck would bar the damages claim until the conviction is set
11 aside and the court would dismiss the action without prejudice to filing a new action if the
12 conviction is ever set aside. Here, however, the defendant's prosecutorial immunity will always
13 remain a bar to an action for damages for the alleged conduct, so the dismissal will be with
14 prejudice.

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

19
20 **CONCLUSION**

21 For the foregoing reasons, this action is DISMISSED with prejudice. The clerk shall
22 close the file.

23 IT IS SO ORDERED.

24 Dated: September 1, 2010

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26 _____
27 SUSAN ILLSTON
28 United States District Judge