

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01236-BNB

JERRY L. MASKE,

Plaintiff,

v.

ARAPAHOE COUNTY,

Defendant.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUN 15 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff Jerry L. Maske currently resides in Aurora, Colorado. Mr. Maske has filed a **pro se** Complaint alleging that he has suffered personal injury, slander, and intentional infliction of emotional distress, because he was falsely arrested based on a fabrication of evidence, was subjected to a search of his home without a warrant, and as a result was placed on probation. Plaintiff seeks \$25,000,000 in damages

The Court must construe the Complaint liberally because Mr. Maske is not represented by an attorney. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). If the Complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, [the Court] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." **Hall**, 935 F.2d at 1110. However, the Court should not act as an advocate

for *pro se* litigants. *See id.* For the reasons stated below, the Complaint and the action will be dismissed.

Mr. Maske seeks money damages for an alleged wrongful criminal proceeding in state court. The Court finds that the only possible jurisdiction for Mr. Maske's claim in this Court is under 42 U.S.C. § 1983. Nonetheless, Mr. Maske may not recover damages for claims that challenge the validity of his conviction and sentence. *See Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the United States Supreme Court held that if a judgment for damages favorable to a prisoner in a 42 U.S.C. § 1983 action necessarily would imply the invalidity of his criminal conviction or sentence, the § 1983 action does not arise until the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by the issuance of a federal habeas writ. *See Heck*, 512 U.S. at 486-87. "*Heck* precludes § 1983 claims relating to pending charges when a judgment in favor of the plaintiff would necessarily imply the invalidity of any conviction or sentence that might result from prosecution of the pending charges. Such claims arise at the time the charges are dismissed." *Beck v. City of Muskogee Police Dept.*, 195 F.3d 553, 557 (10<sup>th</sup> Cir. 1999).

A judgment in favor of Plaintiff's claims necessarily would imply the invalidity of his state court criminal proceedings. Therefore, Plaintiff's claims for damages are barred by *Heck* and will be dismissed. The dismissal will be without prejudice. *See Fottler v. United States*, 73 F.3d 1064, 1065 (10<sup>th</sup> Cir. 1996).

Furthermore, defamation is not a constitutional violation. *See Paul v. Davis*, 424 U.S. 693 (1976). Mr. Maske's slander claim, to the extent he may raise the claim against Arapahoe County, at best is a state claim and inappropriately raised in this Court.


Nonetheless, the Court will dismiss the Complaint and action pursuant to **Heck**.

Accordingly, it is

ORDERED that the Complaint and the action are dismissed without prejudice as barred by the rule in **Heck v. Humphrey**, 512 U.S. 477 (1994).

DATED at Denver, Colorado, this 12 day of June, 2009.

BY THE COURT:

  
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ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01236-BNB

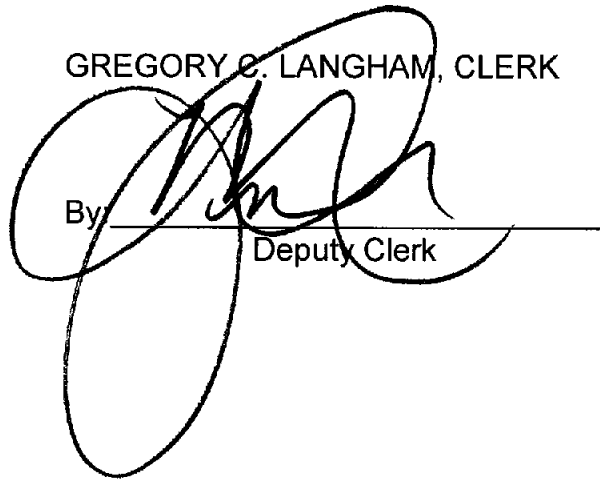
Jerry Maske  
2705 Danube Way, Unit 101  
Aurora, CO 80013

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 6/15/09

GREGORY C. LANGHAM, CLERK

By

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. The text 'By' is to the left of the line, and 'Deputy Clerk' is to the right of the line.