

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

RICHARD GASTELUM-ALMEIDA,

Plaintiff,

v.

CASE NO. 5:12-cv-354-Oc-23PRL

TAMYRA JARVIS, et al.,

Defendants.

ORDER

While incarcerated at the United States penitentiary in Coleman, Florida, Gastelum-Almeida filed a complaint pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (authorizing a civil rights action against a federal official). Gastelum-Almeida seeks expungement of his disciplinary conviction and restoration of good time credit lost as a result of a disciplinary hearing on February 16, 2012.¹

Heck v. Humphrey, 512 U.S. 477 (1994) holds that:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, 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 a determination, or called into question by a federal court's issuance of a writ of habeas corpus[.]

¹ Gastelum-Almeida was transferred to and is now incarcerated at the United States penitentiary in Beaumont, Texas

512 U.S. at 487 (footnote omitted). The Supreme Court has applied *Heck* to a claim challenging a prison disciplinary action even when reinstatement of lost good-time credit is not explicitly sought. *See Edwards v. Balisok*, 520 U.S. 641, 646 (1997) (holding that *Heck* bars a prisoner's complaint that “would, if established, imply the invalidity of the deprivation of his good-time credits”). Moreover, the Supreme Court stated that one reason for imposing the requirement is to prevent a convicted criminal defendant from collaterally attacking his criminal conviction through a civil action. 512 U.S. at 484.

Because a decision for Gastelum-Almeida in this action would imply the invalidity of his disciplinary conviction and because Gastelum-Almeida has not shown that the disciplinary conviction was reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court’s issuance of a writ of habeas corpus, this action is premature.

Accordingly, the complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim. 28 U.S.C. § 1915A(b)(1). The Clerk is directed to enter judgment dismissing the action without prejudice, to terminate any pending motion, and to close the case.

ORDERED in Tampa, Florida, on November 30, 2012.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE