

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

**KURTIS ROY JETER,**

**Plaintiff,**

**vs.**

**5:09CV01-RS/AK**

**STEVE MEADOWS, et al,**

**Defendants .**

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**REPORT AND RECOMMENDATION**

Plaintiff has filed a third amended complaint under 42 U.S.C. § 1983 in which he alludes to a conspiracy between state prosecutors (Defendants Meadows and Pack) and law enforcement (Defendants Holloway, Pierce) with his probation officer (Defendant Gainer) to fabricate charges and hide evidence resulting in his present incarceration. (Doc. 30). He also names the state court judge (Defendant Sirmons) and his own attorney (Defendant Margules) for their errors in relation to his trial that has resulted in his present incarceration on a probation violation. Plaintiff adds in this, his third attempt to state viable claims, claims against Bay County Sheriffs Department and the Office of the State Attorneys, for not managing their employees.

Plaintiff seeks declaratory relief, injunctive relief, and damages.

Although Plaintiff was advised by previous order that these issues are habeas in nature, he has filed a third amended complaint re-alleging the same basic facts.

Attached to a recent Notice of Inquiry are papers which indicate that Plaintiff is proceeding in state court on similar issues. (See Doc. 32).

The fabrication of evidence used to convict Plaintiff are issues which go to the *fact* of his incarceration and should be brought in a habeas petition. See Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841, 36 L. Ed. 2d 439 (1973) (habeas corpus is the “exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release.”). Insofar as he seeks damages, he is precluded from this relief unless and until the sentence or conviction he disagrees with has been reversed or invalidated. See Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994).

In light of the foregoing, it is respectfully **RECOMMENDED** that Plaintiff’s third amended complaint, doc. 30, be **DISMISSED** for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2), and that the order adopting this report and recommendation direct the clerk of court to note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

**IN CHAMBERS** at Gainesville, Florida, this 18th Day of August, 2009.

s/ A Kornblum  
**ALLAN KORNBLUM**  
**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

**A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party’s objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**