

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GREGORY JOHN MILO,

Petitioner,

v.

CASE NO. 17-3154-SAC

WARDEN DAN SCHNURR,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. §2254. On October 24, 2017, the Court ordered a response to the petition.

Petitioner has filed a motion of tort (Doc. #16) in which he seeks damages. Although damages are not available in habeas corpus, a state prisoner may seek such relief in an action under 42 U.S.C. § 1983. Here, however, petitioner's request for damages is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck v. Humphrey*, the U.S. Supreme Court held that when a state prisoner seeks damages in a claim related to his conviction or sentence, the district court must consider whether a judgment in favor of the prisoner would necessarily imply the invalidity of the conviction or sentence. If so, the complaint must be dismissed. *Heck v. Humphrey*, 512 U.S. at 487. Because petitioner has not yet obtained relief from his conviction or sentence, his claim for damages is premature.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion of tort is liberally construed as a motion for damages and is denied.

IT IS SO ORDERED.

DATED: This 28th day of November, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge