

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**CHRISTOPHER RILEY**

**PLAINTIFF**

**v.**

**No. 3:13CV154-NBB-JMV**

**MCCF/MDOC, ET AL.**

**DEFENDANTS**

**MEMORANDUM OPINION**

This matter comes before the court on the *pro se* prisoner complaint of Christopher Riley, who challenges the conditions of his confinement under 42 U.S.C. § 1983. For the purposes of the Prison Litigation Reform Act, the court notes that the plaintiff was incarcerated when he filed this suit. For the reasons set forth below, the instant case will be dismissed for failure to state a claim upon which relief could be granted.

**Factual Allegations**

Riley alleges that he was erroneously found guilty of possessing contraband while housed at the Marshall County Correctional Facility in Holly Springs, Mississippi. Though the infraction occurred on March 5, 2013, the Rule Violation Report stated that the infraction happened a month earlier, February 5, 2013. Thus, when Riley attempted to appeal the ruling, the reviewing officer said that the appeal was filed too late. As a result of the guilty finding, Riley has lost “earned good time,” which would have shortened his prison sentence. In addition, he lost privileges for a period of time.

**Restoration of “Earned Good Time”**

The court will dismiss Riley’s claim under § 1983 seeking the restoration of his “earned time credits.” He contends that the defendants violated his constitutional rights by stripping him of earned time credits which count toward his early release from confinement. The Supreme Court has held that § 1983 is not the appropriate vehicle for an inmate to seek recovery of lost earned time credits, *Preiser*

*v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973), and it is likewise improper for an inmate to sue for damages under § 1983 where success on the merits of the inmate's claim would "necessarily imply" invalidity of confinement. *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). In both cases, the inmate's available remedy is to petition for a writ of *habeas corpus*. The Court has also applied *Heck* to inmates challenging the loss of earned time credits through prison disciplinary proceedings resulting in a change of their sentences. *Edwards v. Balisok*, 520 U.S. 641 (1997). The rule which the Fifth Circuit Court of Appeals follows in determining whether a prisoner must first obtain habeas corpus relief before bringing a § 1983 action is simple: "if a favorable determination would not automatically entitle the prisoner to accelerated release, the proper vehicle for suit is § 1983. If it would so entitle him, he must first get a *habeas* judgment." *Clarke v. Stalder*, 121 F.3d 222, 226 (5<sup>th</sup> Cir.), *reh'g denied*, 133 F.3d 940 (1997) (citing *Orellana v. Kyle*, 65 F.3d 29, 31 (5<sup>th</sup> Cir. 1995), *cert. denied*, 516 U.S. 1059, 116 S. Ct. 736, 133 L. Ed. 2d 686 (1996)). Because plaintiff, if successful in the instant case, would be entitled to accelerated release, he must first obtain habeas relief before bringing suit pursuant to § 1983.

### *Sandin*

As to Riley's claim that he did not receive due process in the handling of his grievance of the appeal thereof, in view of the Supreme Court's decision in *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), he has failed to set forth a claim which implicates the Due Process Clause or any other constitutional protection. As the Court noted, "States may under certain circumstances create liberty interests which are protected by the Due Process Clause [, but] these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary

