

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
OCT 05 2012
Clerk, U.S. District Court
District Of Montana
Billings

GREGORY L. WALLACE,

Plaintiff,

vs.

**KIM HAMM, CRAIG C.
HENSEL, and DAVID DUKE,**

Defendants.

Case No. CV-12-73-BLG-RFC-CSO

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation (doc. 8) with respect to the 28 U.S.C. §§ 1915 and 1915A prescreening of Wallace's pro se prisoner complaint (doc. 2). Judge Ostby recommends the Complaint be dismissed for failure to state a claim upon which relief may be granted. Judge Ostby further recommends that the dismissal of this action count as one "strike" against Wallace pursuant to 28 U.S.C. § 1915(g) and that this Court certify pursuant to Fed.R.App.P. 24(a)(3)(A) that an appeal of this dismissal would not be taken in good faith.

Upon service of a magistrate judge's findings and recommendation, a party

has 14 days to file written objections. 28 U.S.C. § 636(b)(1). Wallace has filed a series of documents with purported objections. Docs. 10 and 12-14.

Accordingly, the Court must make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

To the extent Wallace's objections are comprehensible, they do not change the fact that: (1) he may not challenge his conviction in this civil proceeding, *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); (2) prosecutors Hamm and Hensel are entitled to absolute immunity from liability, *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); and (3) public defender Duke is not subject to § 1983 liability for performing traditional lawyer duties because a public defender does not act under color of state law, *Polk County v. Dodson*, 454 U.S. 312 (1981). Further, no amendment of the Complaint could cure these defects.

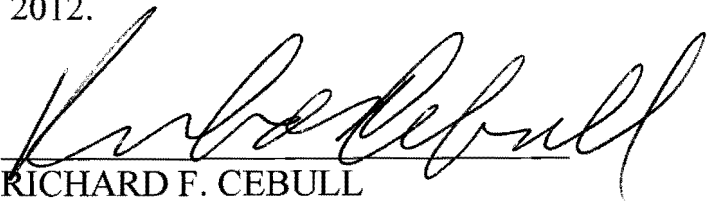
After a *de novo* review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Wallace's Complaint (doc. 2) is **DISMISSED**.

The Clerk of Court is directed to:

- (1) enter judgment against Wallace pursuant to Rule 58 of the Federal Rules of Civil Procedure;
- (2) ensure that the docket reflects that this Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith;
- (3) ensure that the docket reflects that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and
- (4) close this case.

DATED this 5th day of October, 2012.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE