

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

MAYNARD OLD CHIEF,

Plaintiff,

vs.

KEN BIRDRASSLER, ISIA WEBER,
THE STATE OF MONTANA, and
UNITED STATES OF AMERICA,

Defendants.

CV 18-94-GF-BMM

ORDER

Plaintiff Maynard Old Chief (Old Chief) is a federal prisoner proceeding *pro se*. Old Chief alleges that the Defendants violated his rights under the United States Constitution in contravention of 42 U.S.C. § 1983 by subjecting him to an unlawful arrest on July 16, 2017. Old Chief alleges that the unlawful arrest caused this Court to revoke his federal supervised release in Cause CR 08-27-GF-BMM on September 12, 2017, and sentence him to a term of imprisonment.

United States Magistrate Judge John Johnston issued Findings and Recommendations in this matter on July 5, 2017. (Doc. 3). Judge Johnston

recommended that Old Chief's claims be dismissed because they are a challenge, in essence, to the validity of this Court's decision to revoke his supervised release and, as such, are barred by the pronouncement of the United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Old Chief filed an objection to Judge Johnston's Findings and Recommendations. (Doc. 7).

The Court reviews de novo findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1)(C). The Court reviews for clear error all other findings and recommendations. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. To recover damages under § 1983 for an allegedly unconstitutional conviction, or for harm caused by unlawful actions that would render a conviction invalid, a plaintiff must show that his conviction has been reversed on appeal, declared invalid, called into question by the issuance of a habeas writ, or expunged. *Heck*, 512 U.S. 486-87. Old Chief's supervised release revocation in Cause CR 08-27-GF-BMM has not been reversed, declared invalid, expunged, or called into question. Old Chief's claims are barred by *Heck*.

Accordingly, IT IS ORDERED:

1. Old Chief's Complaint (Doc. 1) is DISMISSED with prejudice.

2. Any appeal of this decision would not be taken in good faith as Old Chief's claims lack arguable substance in law or fact. Fed. R. App. P. 24(a)(3)(A).

3. The Clerk is directed to enter judgment accordingly.

DATED this 15th day of August, 2018.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris
United States District Court Judge

