

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

STEPHEN DOUGLAS ALLISON,

Plaintiff,

vs.

PAROLE BOARD DIRECTOR,
PAROLE BOARD MEMEBERS, and
ED FOLEY,

Defendants.

CV-17-00006-H-BMM-JTJ

ORDER

Plaintiff Stephen D. Allison filed an Amended Complaint in compliance with the Court's February 1, 2017, Order. (Doc. 10.) The Court has construed the following claims from Allison's Amended Complaint: (1) Allison's 2006 probation revocation sentence proved unlawful in violation of res judicata, ex-post facto, and double jeopardy; (2) the Parole Board violated state and federal statutes and Parole Board manuals; and (3) the Parole Board denied Allison due process by relying upon false and/or misleading reports in denying him parole. (Doc. 15 at 4.)

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on August 29, 2017. *Id.* The Court granted Allison until November 20, 2017, to file any objections to Judge Johnston's

Findings and Recommendations. (Doc. 18.) Neither party filed objections. When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston determined that Parole Board members hold an absolute quasi-judicial immunity for decisions to grant, deny, or revoke parole. (Doc. 15 at 5.) Allison may not hold members of the Parole Board liable for their decision to deny or revoke his parole. *Id.* Judge Johnston determined that the Montana State District Court revoked Allison's probation and resentenced him. *Id.* Judge Johnston construed this as a challenge to his probation revocation sentence. Judge Johnston further determined that Allison may only bring a claim under 42 U.S.C. § 1983 regarding the constitutionality of the revocation of his probation if the revocation has been invalidated. *See Heck v. Humphrey*, 512 U.S. 477 (1994). Allison remains incarcerated, and, therefore, Judge Johnston found that *Heck* barred Allison's challenge to his probation revocation sentence. (Doc. 15 at 6.)

Judge Johnston concluded that whether the Parole Board followed state law or its own internal procedures constitutes an issue of state law. *Id.* Allison's

allegations regarding his parole violating Montana statutes or Parole Board procedures do not qualify as a federal claim for violation of due process. *Id.* at 7.

Judge Johnston determined that Allison failed to state a claim regarding his allegation that members of the Parole Board and Institutional Probation Parole Officer staff generated false or misleading reports for consideration which denied him his right to discharge his sentence. *Id.* at 7. The Constitution only requires that Allison be provided an opportunity to be heard and a statement of the reasons regarding the denial of his parole. Judge Johnston found that Allison did not allege denial of this process. *Id.* at 8.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 15), are ADOPTED IN FULL.

IT IS ORDERED that matter is DISMISSED.

IT IS ORDERED that the Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk shall have the docket reflect that pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that

any appeal of this decision would not be taken in good faith. The record makes clear that the Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 29th day of November, 2017.



Brian Morris
United States District Court Judge