

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

**FILED**  
AUG 22 2018  
Clerk, U.S. District Court  
District Of Montana  
Missoula

TOBY KITTRELL,

Plaintiff,

vs.

MARC JOHNSON, LUKE  
JOHNSON, DETENTION OFFICERS  
CO MINER AND CO BUCHHOLTZ,

Defendants.

CV 18-101-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order and Findings and Recommendations (Doc. 5) in this case on June 19, 2018, recommending Plaintiff Toby Kittrell's case be dismissed as barred by the United States Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994). (Doc. 5 at 5.) By failing to timely object to the Order and Findings and Recommendations, Kittrell waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Reviewing for clear error and finding none,

IT IS ORDERED that Judge Lynch's Order and Findings and Recommendations (Doc. 5) are ADOPTED IN FULL and this case is DISMISSED.

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

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain that the instant Complaint is frivolous as it lacks arguable substance in fact or law.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Kittrell failed to state a claim upon which relief may be granted.

DATED this 22<sup>nd</sup> day of August, 2018.

  
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Dana L. Christensen, Chief Judge  
United States District Court