

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CALVIN IVERY]
Plaintiff,]
v.]
STATE OF TENNESSEE, et al.]
Defendants.]

No. **3 10 07025**
(No. 3:10-mc-0068)
JUDGE HAYNES

MEMORANDUM

Plaintiff, an inmate at the West Tennessee State Penitentiary, filed this *pro se* action under 42 U.S.C. § 1983 against the Defendants: State of Tennessee and Michael Johnson, an attorney. Plaintiff's claims arise out of his claim that his state conviction. According to his complaint, Plaintiff pled guilty to attempted murder. For this crime, he received a sentence of fifteen (15) years. Plaintiff's claim is that the conviction is void because he was denied the effective assistance of counsel.

To obtain relief for an allegedly unconstitutional conviction or confinement under 42 U.S.C. § 1983. Plaintiff must allege that his conviction or confinement has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Plaintiff has failed to

allege that his conviction has already been overturned by a state or federal court. Therefore, the Plaintiff's claim is not yet cognizable in a § 1983 action. Under such circumstances, the Court is obliged to dismiss the complaint without prejudice *sua sponte*. 28 U.S.C. § 1915(e)(2).

An appropriate order is filed herewith.



WILLIAM J. HAYNES, JR.
United States District Judge