

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

ANDREW TOLIVER, #1715875

§

VS.

§

CIVIL ACTION NO. 4:13cv364

SHERMAN POLICE DEPT., ET AL.

§

ORDER OF DISMISSAL

Plaintiff Andrew Toliver, a prisoner confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil lawsuit. The complaint was referred to United States Magistrate Judge Amos L. Mazzant, who issued a Second Report and Recommendation concluding that the lawsuit should be dismissed. Toliver has filed objections.

The lawsuit concerns the circumstances surrounding Toliver's Grayson County conviction for two counts of failing to comply with sex offender requirements. Toliver asked for \$80,000 in damages. Magistrate Judge Mazzant concluded that his claims were barred by *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364 (1994). In his objections, Toliver persisted in complaining about his conviction, and he argued that *Heck* should not apply. However, the decision in *Heck* is squarely on point. The Supreme Court held that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* at 487, 114 S. Ct. at 2372. In the present case, a judgment in

Toliver's favor would imply the invalidity of his conviction. The present civil rights lawsuit is barred by *Heck*.

The Second Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Toliver to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Toliver's objections lack merit. Therefore the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1). Toliver's claims against the Sherman Police Department, Catherine Craig and D. Roberson are **DISMISSED** with prejudice to their being asserted again until the *Heck* conditions are met. All other claims are **DISMISSED** with prejudice for all purposes. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **30** day of **September, 2013**.



Ron Clark, United States District Judge