

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 DARYL BERRY,

CASE NO. C14-1015-JCC

10 Plaintiff,

ORDER

11 v.

12 J. WHITE, *et al.*,

13 Defendants.  
14

15 This matter comes before the Court on the Report and Recommendation (Dkt. No. 5) of  
16 the Honorable Mary Alice Theiler, United States Magistrate Judge. Judge Theiler recommends  
17 that the Court deny Plaintiff's motion to proceed *in forma pauperis* and dismiss his proposed §  
18 1983 complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) because it "appears clear from the face of  
19 the complaint that the claims asserted by plaintiff call into question the lawfulness of his  
20 conviction on state court criminal charges[, even though] plaintiff has not demonstrated that his  
21 conviction or sentence has been reversed, expunged, invalidated, or impugned in any way." (Dkt.  
22 No. 5 at 2 (citing *Heck v. Humphrey*, 512 U.S. 477 (1994).) Plaintiff did not file any objections  
23 to Judge Theiler's Report and Recommendation, though he did send two letters to the Court in  
24 which he requests assistance in bringing a lawsuit because he believes he is unable to  
25 competently represent himself. (Dkt. Nos. 6, 7.) He requests the right to further pursue his  
26 lawsuit after a decision has been made by the state courts on the appeal of his criminal

ORDER  
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1 conviction. (Dkt. No. 7.)

2           The Court has reviewed the Report and Recommendation, Plaintiff's complaint, and  
3 Plaintiff's subsequent filings. Nothing in Plaintiff's letters to the Court provides a basis for  
4 rejecting Judge Theiler's Report and Recommendation. The Court is sympathetic to Mr. Berry's  
5 stated need for assistance in bringing a future lawsuit on an appropriate basis, and will  
6 accordingly direct the Clerk to provide Plaintiff with a copy of this district's *pro se* litigation  
7 guide. That document will assist Plaintiff in determining how to bring an appropriate collateral  
8 challenge under 28 U.S.C. § 2254 to his state court conviction or, as future circumstances may  
9 warrant, a civil action under 42 U.S.C. § 1983. The Court also notes that in any future lawsuit,  
10 Mr. Berry may request that the Court appoint counsel on his behalf. Nonetheless, a review of  
11 Plaintiff's proposed complaint and Judge Theiler's Report and Recommendation make clear that  
12 the proposed complaint as submitted provides no basis for Plaintiff to proceed with this action *in*  
13 *forma pauperis*. Accordingly, the Court hereby finds and ORDERS as follows:

14           (1)     The Court ADOPTS the Report and Recommendation;

15           (2)     Plaintiff's complaint (Dkt. No. 1) and this action are DISMISSED without  
16 prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

17           (3)     The Clerk is respectfully directed to provide Plaintiff with a copy of this district's  
18 *pro se* litigation guide; and

19           (4)     The Clerk is respectfully directed to send copies of this Order to Plaintiff and to  
20 Judge Theiler.

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1 DATED this 27th day of August 2014.

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5 A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style with a horizontal line underneath it.

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8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE  
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