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WESTERN DISTRICT OF WASHINGTON AT TACOMA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDDIE JOE BUSH,
Plaintiff,

v.

C. J. MERRITT, et al.,
Defendants.

Case No. C01-5240FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION

The Magistrate Judge considered this Section 1983 complaint and recommended that it be dismissed because it challenges his confinement which has not been reversed, expunged, invalidated or impugned by a writ of habeas corpus. See, *Heck v. Humphrey*, 512 U.S. 477, 489 (1994).

In his objection to the Report and Recommendation, Plaintiff argues that because he attacks the actions of state appellate court clerks whose actions did not contribute to his conviction and sentence, their actions are not prosecutorial in nature and his action should be allowed to proceed because he shows constitutional deprivations under the First and Fourth Amendments.

The Magistrate Judge was aware of Plaintiff's assertions; he allowed Plaintiff to amend his first complaint, but review of the amended complaint led to the Report and Recommendation

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1 currently before the Court. Plaintiff has not convinced the Court to reverse the Magistrate Judge.
2 Plaintiff's claim is not cognizable pursuant to *Heck v. Humphrey*, 512 U.S. 477, 489 (1994).

3 ACCORDINGLY,

4 IT IS ORDERED:

5 (1) Plaintiff's Objections are overruled and the Court adopts the Report and
6 Recommendation;

7 (2) This cause of action is DISMISSED AS FRIVOLOUS;

8 (3) The Clerk is directed to send copies of this Order to plaintiff, and to the Hon. J. Kelley
9 Arnold and to count this dismissal as a strike under 28 U.S.C. § 1915(g).

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11 DATED this 24 day of September, 2001.

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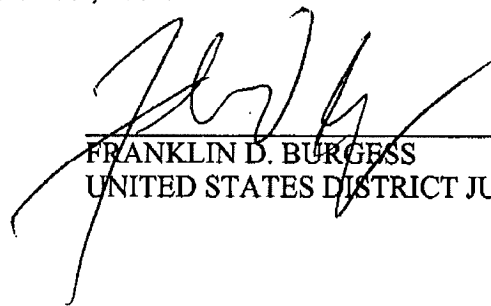
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ORDER - 2



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE