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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES ERNEST DICKERSON,

Plaintiff,

v.

ROBERT LYNN ROGERS,

Defendant.

Case No. C06-5419 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION DISMISSING  
COMPLAINT AS FRIVOLOUS AND  
FOR FAILURE TO STATE A CLAIM,  
WITH DISMISSAL COUNTING AS A  
STRIKE PURSUANT TO 28 U.S.C. §  
1915(g)

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge that Plaintiff's civil rights action be dismissed as frivolous, for failure to state a claim, and with the dismissal counting as a strike under the Prison Litigation Reform Act, 28 U.S.C. 1915(g). As detailed by the Magistrate Judge, Plaintiff may not sue his criminal defense counsel in a 42 U.S.C. § 1983 action. The complaint is frivolous. Further, Plaintiff is attempting to call into issue his criminal conviction. Plaintiff would first need to obtain relief in habeas corpus and he cannot do so as such relief is now time barred.

The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of Judge

1 J. Kelly Arnold, United States Magistrate Judge, and the remaining record, does hereby find and  
2 Order:

- 3 (1) The Court adopts the Report and Recommendation;  
4 (2) This action is **DISMISSED WITH PREJUDICE**;  
5 (3) This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g);  
6 (4) The Clerk is directed to send copies of this Order to Plaintiff and to the Honorable J.  
7 Kelly Arnold, Magistrate Judge.


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9 DATED this 22<sup>nd</sup> day of September, 2006.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

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26 ORDER - 2