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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. JACKSON,

Plaintiff,

v.

JAMES MCGUIRE, et al.,

Defendants.

Case No. C01-5056RJB

ORDER DISMISSING COMPLAINT
PURSUANT TO 28 U.S.C. §
1915(e)(2)

This matter comes before the court on the Report and Recommendation of the Honorable J. Kelley Arnold (Dkt. #25). The court has considered the Report and Recommendation and the remaining file herein. No pleadings were filed in opposition to the Report and Recommendation.

On February 6, 2001, plaintiff filed a Civil Rights Complaint by a Prisoner under 42 U.S.C. § 1983 (Dkt. #7), which was referred to United States Magistrate Judge J. Kelley Arnold. The Magistrate Judge issued an Order to Show Cause (Dkt. #9) dated February 6, 2001, which identified the following deficiencies in plaintiff's complaint: 1) plaintiff failed to state a claim of cruel and unusual punishment; 2) plaintiff's claims against the defendants based on his placement in a particular cell, unit or prison facility appear to be frivolous; and 3) plaintiff failed to state how each of the named defendants personally participated in an alleged violation of his constitutional or civil


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1 rights. The Order to Show Cause required plaintiff to cure the above deficiencies by filing an
2 amended complaint by February 28, 2001.

3 Plaintiff filed a second Civil Rights Complaint by a Prisoner under 42 U.S.C. § 1983, which
4 was dated February 6, 2001, and was lodged in the court file on February 9, 2001. This complaint
5 does not address the deficiencies identified in the Order to Show Cause. Furthermore, the claims
6 raised in the lodged complaint must be rejected pursuant to *Heck v. Humphrey*, 114 S.Ct. 2364
7 (1994), because they relate to Mr. Jackson's underlying conviction. Plaintiff has not responded to
8 the Order to Show Cause by filing an amended complaint curing the deficiencies in his original
9 complaint.

10 Because plaintiff's original complaint is deficient and plaintiff has failed to file an amended
11 complaint curing the deficiencies identified in the Order to Show Cause, the court concurs that
12 plaintiff's claim should be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2) and for failure
13 to prosecute.

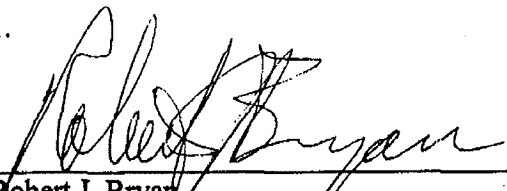
14 Therefore, it is hereby

15 **ORDERED** that the Report and Recommendation (Dkt. #25) is **ADOPTED**, and plaintiff's
16 complaints and causes of action are **DISMISSED WITHOUT PREJUDICE** as frivolous pursuant
17 to 28 U.S.C. § 1915(e)(2) and for failure to prosecute. 

18 The Clerk is directed to count this as a dismissal under 28 U.S.C. § 1915(g) and is further
19 directed to send uncertified copies of this order to plaintiff, counsel for defendants, and the
20 Honorable J. Kelley Arnold.

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22 DATED this 25 day of April, 2001.

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Robert J. Bryan
United States District Judge