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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM E. NELSON,

Plaintiff,

v.

GARY LUCAS, *et al.*,

Defendants.

Case No. C99-5276FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION

In this prisoner civil rights case, the Magistrate Judge has filed a report and recommendation concluding that Plaintiff's claims regarding his conviction in Nevada, his extradition to Washington, and his current confinement at the Clark County Jail awaiting trial are challenges to the fact and/or duration of confinement and are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) because Plaintiff has not shown that his conviction or sentence has been reversed. The Magistrate Judge further concludes that Plaintiff has failed to allege sufficient facts to state a civil rights claim that the conditions of his confinement at the Clark County jail are unconstitutional and that his motion to take judicial notice /emergency injunction to enjoin illegal state proceedings (Docket 14) should be

ORDER - 1

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1 denied, and the cause dismissed as frivolous. ¹

2 Plaintiff has filed objections (Docket 21) to the R & R. Plaintiff asserts that because of the
3 frauds and conspiracies of the defendants he was tricked into believing he was doing time prior to
4 being illegally transported to the State of Washington and that the trial judge would not order that
5 Plaintiff be notified of orders and judgments regarding his "post conviction," and that the Nevada
6 State District Court Clerk has refused to waive court costs, and will not send sealed orders and
7 judgments without a court order. Plaintiff explains that this is why he is unable to show that the
8 Nevada conviction was invalidated prior to his transport to Washington.

9 Plaintiff's claims challenging the legality of his Nevada conviction and his transportation to
10 and current confinement in Washington, are not cognizable in a civil rights lawsuit absent a showing
11 that the sentence or conviction has been invalidated. A challenge to the fact or duration of
12 confinement may be made by filing a writ of habeas corpus, *Preiser v. Rodriguez*, 411 U.S. 475
13 (1973), but prior to bringing such petition in federal court, state remedies must be exhausted. *Rose*
14 *v. Lundy*, 455 U.S. 509 (1982).

15 Plaintiff's claims challenging the conditions of his confinement in the Clark County Jail do not
16 allege how any of the named defendants personally participated in the conduct alleged, *see Aldabe v.*
17 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980), among other infirmities. Plaintiff has failed to make a
18 further showing on these claims in his objections.

19 ACCORDINGLY,

20 ////

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22 ¹ An earlier R & R (Docket 8) recommended the denial of Plaintiff's motion for an
23 emergency injunction restraining the Clark County Defendants from illegally prosecuting him and
24 form illegally extraditing him to Nevada. This R & R was adopted August 18, 1999 (Docket 20)
25 after consideration of Plaintiff's objections (Docket 11). Plaintiff appealed that Order (Docket 23).
26 The Court has responded to the Ninth Circuit's inquiry about the appeal (Docket 26).

1 IT IS HEREBY ORDERED:

2 (1) The Court adopts the Report and Recommendation (Docket 17);

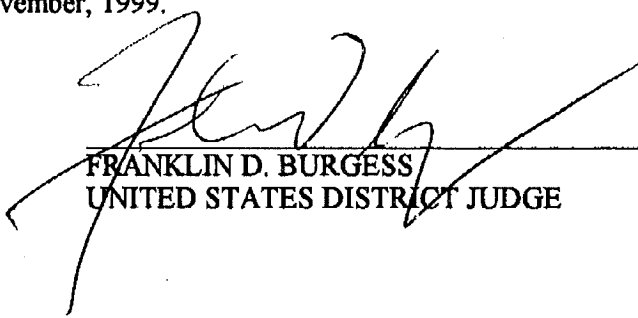
3 (2) Plaintiff's Motion for Court to Take Judicial Notice/Emergency Injunction to Enjoin
4 Illegal State Proceedings (Docket 14) is DENIED;

5 (3) Plaintiff's Motion to Hold Civil Suit in Abeyance Pending Determination of Habeas
6 Corpus Petition, etc. (Docket 27) is STRICKEN as MOOT in view of this Order adopting the
7 Report and Recommendation;

8 (4) The Complaint and Plaintiff's causes of action are DISMISSED with prejudice as
9 frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915 (e)(2)(B) and 28 U.S.C. §
10 1915A(b)(1); and

11 (5) The Clerk is directed to dismiss this action with prejudice pursuant to 28 U.S.C. §
12 1915(e)(2)(B) and 28 U.S.C. § 1915A(b)(1), and to send copies of this Order to Plaintiff under the
13 names William E. Nelson and Harry Conner, to the Hon. David E. Wilson, and to the Office of the
14 Attorney General.

15 DATED this 5 day of November, 1999.

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18 FRANKLIN D. BURGESS
19 UNITED STATES DISTRICT JUDGE
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26 ORDER - 3