

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RODNEY C. MOORE,

Plaintiff,

v.

MARK BENNETT, STATE OF WISCONSIN,  
COLUMBIA COUNTY COURTHOUSE,  
JANE KOHLWAY, MARK LAWTON  
and CITY OF PORTAGE,

Defendants.  
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ORDER

09-cv-364-slc<sup>1</sup>

This is the fourth of six lawsuits that plaintiff Rodney Moore, a Wisconsin prisoner, had filed in this court in June 2009. In a previous order, dkt. #5, the magistrate judge concluded that plaintiff has no means to make an initial partial payment. 28 U.S.C. § 1915(b)(4).

The thrust of the complaint in this case is that defendant Mark Bennett, an assistant

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<sup>1</sup> While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

district attorney, colluded with Mark Lawton, plaintiff's criminal defense attorney, to prosecute plaintiff for a crime he did not commit. This claim is barred by Heck v. Humphrey, 512 U.S. 477 (1994), and Preiser v. Rodriguez, 411 U.S. 475 (1973), because success on the claim would undermine his conviction. Even if Heck and Preiser did not apply, plaintiff may not sue prosecutors or criminal defense lawyers under 42 U.S.C. § 1983 for acts they take in the course of judicial proceedings. Van De Kamp v. Goldstein, 129 S. Ct. 855, 859-61 (2009); Polk County v. Dodson, 454 U.S. 312 (1981).

#### ORDER

IT IS ORDERED that

1. This case is DISMISSED for plaintiff Rodney Moore's failure to state a claim upon which relief may be granted.
2. A strike will be recorded in accordance with 28 U.S.C. § 1915(g).
3. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.
4. The clerk of court is directed to enter judgment in favor of defendants and close

this case.

Entered this 20<sup>th</sup> day of July, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge