

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

RICHARD LEONARDI,

Plaintiff,

v.

RANDALL KWASINSKI, CHRISTOPHER SCHUSTER,
DETECTIVE BEAUDRY and YOLANDA ROBERTSON

Defendants.

ORDER

12-cv-133-bbc

Plaintiff Richard Leonardi has filed a motion for reconsideration of the order dated April 18, 2012, in which I dismissed his claim that defendant Yolanda Robertson violated his rights under the due process clause by planting evidence in his home. I did not reach the merits of the claim; instead, I concluded that it was barred under Preiser v. Rodriguez, 411 U.S. 475 (1973), and Heck v. Humphrey, 512 U.S. 477 (1994), which prohibits persons in custody from bringing a civil rights action under 42 U.S.C. § 1983 if success on the claim would call into question the validity of their confinement. In that situation, the prisoner must first have his conviction overturned by filing a petition for a writ of habeas corpus after exhausting his remedies in state court.

In this case, plaintiff is alleging that defendant Robertson planted illegal drugs in his home and that his extended supervision was later revoked in part for possessing those drugs. Thus, if plaintiff's allegations are true, the decision to revoke his supervision would be

invalid, which means he cannot bring that claim under § 1983.

In his motion for reconsideration, plaintiff argues that Heck and Preiser do not apply because his extended supervision “was not revoked solely due to the admission of the heroin in said revocation proceedings.” Plt.’s Br., dkt, #14, at 2. Rather, there were various other reasons, in addition to the finding of drug possession, that his extended supervision was revoked, such as theft, loitering and absconding.

Unfortunately for plaintiff, the distinction he is attempting to make cannot help him avoid the rule of Heck and Preiser. Plaintiff has pointed to an alleged constitutional violation that would invalidate the decision to revoke his supervision. Although it is possible that state officials could seek to hold a new hearing and revoke his supervision for the other reasons he cites, this does not change the fact that it would be impossible to rule in plaintiff’s favor on his false evidence claim without calling into question the validity of the revocation decision.

ORDER

IT IS ORDERED that plaintiff Richard Leonardi’s motion for reconsideration, dkt.

#14, is DENIED.

Entered this 11th day of June, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge