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

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EARLE DeWAYNE PHIFFER,

OPINION AND ORDER

Plaintiff,

12-cv-359-bbc

v.

MICHAEL J. BYRON, MICHAEL R. FITZPATRICK, CHARLES P. DYKMAN, PAUL J. LUNDSTEN, PAUL B. HIGGENBOTHAM, BARBARA B. CRABB and JOSHUA KLAFF,

Defendants.

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In this lawsuit, plaintiff Earle DeWayne Phiffer alleges that defendants violated his rights under the Eighth Amendment by denying him sentencing credit for time served. In an order entered on August 21, 2012, dkt. #7, I dismissed plaintiff's complaint because defendants Michael Byron, Charles Dykman, Paul Lundsten and Paul Higginbotham were entitled to absolute immunity for actions they took in their judicial capacities; defendant Joshua Kloff was not a state actor; and the complaint contained no allegations against defendants Michael Fitzpatrick and me. In addition, I found that plaintiff's claim that his sentence was miscalculated was barred by Heck v. Humphrey, 512 U.S. 477 (1994).

Plaintiff has filed a motion for reconsideration. Dkt. #10. Because the motion does not identify any reasons for the court to change its prior ruling, the motion will be dismissed.

First, plaintiff argues that defendants Byron, Dykman, Lundsten and Higginbotham

are not entitled to absolute immunity from suit under 42 U.S.C. § 1983, because that statute provides that "*every person* who, under color of any statute, ordinance, regulation, custom, or usage of any State, . . . subjects another person . . . to a deprivation of any rights, privileges or immunities secured by the Constitution." However, despite the broad scope of the statute, the Supreme Court has recognized since at least 1872 that judges are absolutely immune from civil suit for actions taken in their judicial capacity. Forrester v. White, 484 U.S. 219, 225 (1988) (citing Bradley v. Fisher, 13 Wall. 335, 347, 20 L.Ed. 646 (1872)).

Plaintiff also argues that judicial immunity and Heck should not bar his claim because other courts have held that it is cruel and unusual punishment to imprison an inmate beyond the terms of his sentence. However, in the cases that plaintiff cites, prison officials held prisoners longer than their sentence. E.g. Campbell v. Peters, 256 F.3d 695, 700 (7th Cir. 2001); Sample v. Diecks, 885 F.2d 1099, 1102-03 (3d Cir. 1989). The prisoners' claims were not barred by Heck because the prisoners were not challenging the validity of their initial sentence. Moreover, prison officials are entitled only to "qualified immunity," which means they may not be sued for damages unless they have violated a clearly established right. Id. at 699. Judges are entitled to absolute immunity from suit, which means that a judge may not be sued for judicial actions, even if he or she was acting in bad faith, unless the judge acted in the absence of all jurisdiction. Mireles v. Waco, 502 U.S. 9, 11-12 (1991). Plaintiff's allegations that defendants made mistakes during his sentencing and appeal are not sufficient to overcome absolute judicial immunity, even if the defendants could be shown to have acted recklessly or maliciously.

ORDER

IT IS ORDERED that plaintiff Earle Dewayne Phiffer's motion for reconsideration is DENIED.

Entered this 27th day of September, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge