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

DEAN M. ALLEN,

Plaintiff,

ORDER

v.

12-cv-154-wmc

RICHARD S. BROWN, PAUL LUNDSTEN, PAUL B. HIGGINBOTHAM, MARGARET J. VERGERONT, GARY E. SHERMAN, BRIAN BLANCHARD and JAMES M. FREIMUTH,

Defendants.

Plaintiff Dean M. Allen filed a civil action pursuant to 42 U.S.C. § 1983, seeking declaratory relief from an adverse state court ruling entered during his appeal from a criminal judgment of conviction. On May 30, 2013, the court dismissed this action after finding that Allen's claims were precluded by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), which bars review if a judgment in favor of the plaintiff would "necessarily imply the invalidity" of a conviction or sentence that had not been invalidated previously.

Allen has now filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). To prevail on a motion under Rule 59(e), the moving party must identify an error of law that merits reconsideration of the judgment. *See Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008); *Sigsworth v. City of Aurora, Ill.*, 487 F.3d 506, 511-12 (7th Cir. 2007). Allen does not make that showing here.

Allen filed this suit against several state court judges, accusing them of "conspiring with" the state's attorney during the appeal from Allen's conviction and sentence. As proof of the conspiracy, Allen maintains that the state court decision affirming his conviction does not correctly apply precedent from the United States Supreme Court. Notwithstanding this argument, Allen insists that the rule in *Heck* does not bar review

because a declaratory judgment in his favor would not impact the validity of his underlying conviction. Rather, Allen would use a favorable judgment from this court to "persuade" the state court judges named as defendants in this case "to voluntarily vacate" their mandate and reconsider his appeal under the correct legal standard. This is precisely the type of review that *Heck* forbids. *See Okoro v. Callahan*, 324 F.3d 488, 490 (7th Cir. 2003) ("It is irrelevant that [the plaintiff] disclaims any intention of challenging his conviction; if he makes allegations that are inconsistent with the conviction's having been valid, *Heck* kicks in and bars his civil suit.") (citations omitted); *see also Jones v. Watkins*, 945 F. Supp. 1143, 1151 (N.D. Ill. 1996) (rejecting a request for declaratory judgment review, because a civil rights plaintiff "cannot seek to accomplish by a section 1983 declaratory judgment what he must accomplish through a writ of habeas corpus" (citing *Preiser v. Rodriguez*, 411 U.S. 475, 487-90 (1973)).

Allen does not show that the dismissal order was entered in error or that he is entitled to relief from the judgment. Accordingly, Allen's Rule 59(e) motion will be denied.

ORDER

IT IS ORDERED that plaintiff Dean M. Allen's motion to alter or amend the judgment (Dkt. # 13) is DENIED.

Entered this 25th day of June, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge