

trial in 1990. Plaintiff asserts that he was deprived of the opportunity to "challenge the credibility" of these witnesses, who denied having the disease.

According to plaintiff, testing the witnesses would show that they were having an affair, which they denied during testimony at plaintiff's criminal trial. Plaintiff claims that he contracted genital herpes as a result of this affair. As relief, plaintiff requests that Lani Dickerson and James Moore be tested for genital herpes. Plaintiff asserts that this testing for genital herpes may prove exculpatory because it will show the witnesses lied on the stand and may impugn the validity of his conviction.

The Court need not address the merits of each argument defendants advance in favor of dismissal as the plaintiff's § 1983 action is barred by the doctrine set forth in Heck v. Humphrey, 512 U.S. 477 (1994).²

²The Court initially dismissed this case as frivolous, but later vacated that order because a complaint may not be deemed frivolous once the Court orders service of the complaint. The initial dismissal order was based on a statute of limitations bar to plaintiff's complaint. Implicit in that opinion was a finding that the case was not barred by Heck v. Humphrey, 512 U.S. 477 (1994), but rather was controlled by Wilkinson v. Dotson, 544 U.S. 44, 125 S.Ct. 1242 (2005). Because the Court determined that the action was not barred by Heck, it measured the running of the statute of limitations from the time plaintiff knew or should have known about the government's failure to order medical testing at trial. That analysis was incorrect because, as discussed in the instant memorandum, Heck applies to bar plaintiff's claim. The statute of limitations would not begin to run until the underlying conviction is invalidated. See Gibson

In Heck, a prisoner filed a § 1983 civil suit seeking money damages alleging that prosecutors and officers had engaged in an unlawful investigation, destroyed evidence and caused an unlawful identification procedure to be used at trial. The Court dismissed the plaintiff's case, holding that:

when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Id. at 487.

Applying the teachings of Heck to this case, the Court concludes that granting relief in this case would necessarily be predicated upon a finding that plaintiff was entitled to present evidence at trial that both Dickerson and Moore have genital herpes. Therefore, the ruling in this case would necessarily call into question the validity of the underlying conviction.

Plaintiff argues that he is not seeking monetary damages, but rather only an order that the witnesses submit to medical testing for genital herpes and that the relief sought, if granted, would not itself undermine the validity of his conviction. The Court disagrees. Whether the plaintiff seeks money damages or injunctive relief, if the relief sought will

v. Super. of N.J. Dep't of L. & Pub. Safety, 411 F.3d 427, 447 (3d. Cir. 2005).

necessarily invalidate the validity of the conviction, it is barred by Heck. See Wilkinson v. Dotson, 544 U.S. 44, 125 S.Ct. 1242, 1248 (2005). Here, the plaintiff seeks to revisit the correctness of the state court's proceedings regarding whether plaintiff should have been permitted to offer certain exculpatory evidence. This is precisely the type of direct impeachment of a state conviction that Heck prohibits.

Wilkinson also is not helpful to plaintiff. There, the Court declared Heck inapplicable to claims brought by two prisoners seeking declaratory and injunctive relief for allegedly unconstitutional state parole board procedures. The procedural challenges at issue in Wilkinson involved the ex post facto effect of applying new parole guidelines retroactively to prisoners whose sentences began before those guidelines were enacted. The relief sought - a new parole board hearing - did not mean the prisoners would be entitled to speedier release, but rather at most meant a new parole board hearing for each prisoner that may or may not affect their release dates. Nothing in the prisoners' claims questioned their convictions or sentences. The state argued that the claim, in essence, was an attempt to seek earlier release through implying the invalidity of prisoners' sentences, which included the parole board determinations. Wilkinson, 125 S.Ct. at 1248-49 (focusing on the "sentence" language in Heck). The Court clarified that a prisoner's

sentence is the "substantive determinations as to the length of confinement," and not parole board determinations. Id. at 1249. Moreover, the Court likened parole board procedures to other "prison administrative conditions" that are consistently challenged under § 1983. Id. ("this Court has repeatedly permitted prisoners to bring § 1983 actions challenging the conditions of their confinement - conditions that, were Ohio right, might be considered part of the 'sentence'" and therefore barred by Heck). The Court determined that the "connection between the constitutionality of the prisoners' parole proceedings and release from confinement is too tenuous here to achieve Ohio's legal door-closing objective." Id. at 1246.

Here, by contrast, plaintiff's claim, i.e. mandating a medical test which would disclose the availability of exculpatory evidence, would directly call into question his conviction in state court. The focus here is on the "conviction" language in Heck. To grant a medical test would undermine the procedural and substantive determination of the state trial court that the evidence was inadmissible, thereby questioning the validity of the conviction that followed. Unlike the procedural challenge in Wilkinson and the relief in the form of a new parole board hearing that may or may not have resulted in a grant of parole, the granting of the medical testing goes to the validity of the trial upon which plaintiff's conviction is based. Moreover, the

connection between the test results and the direct challenge to plaintiff's conviction is not "too tenuous," as the grant of the test itself requires the Court to change an evidentiary ruling at trial that formed the basis of plaintiff's conviction. The proper avenue for such a claim is a habeas petition, not a civil action under § 1983.

For all of these reasons, the motion to dismiss will be granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
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| AMIR HAKIM MCCAIN, | : | CIVIL ACTION |
| | : | NO. 04-5513 |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| PAUL HENRIKSEN, et al., | : | |
| | : | |
| Defendants. | : | |

ORDER

AND NOW, this **13th** day of **April 2006**, it is hereby **ORDERED** that Defendants' Motion to Dismiss (doc. no. 14) is **GRANTED**. The case shall be marked **CLOSED**.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno
EDUARDO C. ROBRENO, J.