

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RAY ANTHONY MILES,
Plaintiff,

vs.

Case No. 11-4187-JTM

STATE OF KANSAS, WILLIAM PETERSON, AND
THE KANSAS ATTORNEY GENERAL,
Defendants.

MEMORANDUM AND ORDER

Pro se plaintiff Ray Anthony Miles has brought the present action seeking damages under 42 U.S.C. § 1983, complaining generally about the performance of his prior attorney William Peterson in connection with a prior state criminal action. Miles' complaint alleges only that "He fail to defend My Civil Right He let the Court taka [sic] away My Right to be heard according to the 5th Amendment And My Right to due Process under the 14th Amendment And he didn't file an Appeal on My entire case." Miles seeks \$10 million in damages.

This matter is before the court on the Motions to Dismiss filed by the State of Kansas and its Attorney General (Dkt. 10), as well as by defendant Peterson. The state defendants argue the action should be dismissed (1) under Fed.R.Civ.Pr. 12(b)(6) as failing to state a claim for relief and under Rule 12(b)(1), (2) is barred by Eleventh Amendment immunity, (3) they are not persons acting under color of law for purposes of § 1983 or have not been shown to have personally been involved

in any constitutional deprivation, and (4) the action is otherwise barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that any damages claim based on a state criminal proceeding is only ripe if the conviction has been overturned). The defendant Peterson has filed a separate motion joining in the first and last of these arguments.

Plaintiff Miles has filed no response to the Motions to Dismiss. Both pursuant to D.Kan.R. 7.4 and for good cause shown, the plaintiff's action will accordingly be dismissed.

IT IS ACCORDINGLY ORDERED this 12th day of March, 2012, that the defendants' Motions to Dismiss (Dkt. 10, 15) are hereby granted.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE