

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CRAIG EDWARD OLIVER,

Plaintiff,

v.

CASE NO. 22-3279-JWL-JPO

**BRANDON L. JONES,
Osage County Attorney,**

Defendant.

MEMORANDUM AND ORDER

Plaintiff filed this pro se civil rights case while confined at the Larned Correctional Mental Health Facility in Larned, Kansas. On November 22, 2022, the Court entered a Memorandum and Order to Show Cause (Doc. 5) (“MOSC”) ordering Plaintiff to show good cause why his Complaint should not be dismissed for the reasons set forth in the MOSC. This matter is before the Court on Plaintiff’s response (Doc. 6).

Plaintiff’s claims relate to his state criminal proceedings. He names the county prosecutor as the sole defendant. Plaintiff claims that the pre-sentence investigator’s signature was falsified and he was denied due process. (Doc. 1, at 3.) He also claims “defamation of character” in the form of libel, breach of plea agreement, and breach of the Federal and State Rules of Criminal Procedure. *Id.* at 3–4. Plaintiff then references a pre-sentence investigation, a plea agreement, and a criminal case from 2012. *Id.* at 4, 13–14.

The Court found in the MOSC that to the extent Plaintiff challenges the validity of his sentence in his state criminal case, his federal claim must be presented in habeas corpus. “[A] § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, *but not to the fact or length of his custody.*” *Preiser v.*

Rodriguez, 411 U.S. 475, 499 (1973) (emphasis added). When the legality of a confinement is challenged so that the remedy would be release or a speedier release, the case must be filed as a habeas corpus proceeding rather than under 42 U.S.C. § 1983, and the plaintiff must comply with the exhaustion of state court remedies requirement. *Heck v. Humphrey*, 512 U.S. 477, 482 (1994). The Court also found that before Plaintiff may proceed in a federal civil action for monetary damages based upon an invalid conviction or sentence, he must show that his conviction or sentence has been overturned, reversed, or otherwise called into question. *Heck*, 512 U.S. 477.

The Court also found that Plaintiff's claims against the county prosecutor fail on the ground of prosecutorial immunity. Prosecutors are absolutely immune from liability for damages in actions asserted against them for actions taken "in initiating a prosecution and in presenting the State's case." *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976).

In his response, Plaintiff argues that he has a valid libel claim. Plaintiff points to the transcript and plea agreement from his 2012 criminal proceedings. Although Plaintiff asks this Court to remove these publications, he asserts that this is not an attack on his sentence. However, if Plaintiff has been convicted and a judgment on Plaintiff's claim in this case would necessarily imply the invalidity of that conviction, the claim may be barred by *Heck*. In *Heck v. Humphrey*, the United States Supreme Court held that when a state prisoner seeks damages in a § 1983 action, the district court must consider the following:

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. In *Heck*, the Supreme Court held that a § 1983 damages claim that necessarily implicates the validity of the plaintiff's conviction or sentence is not cognizable unless and until

the conviction or sentence is overturned, either on appeal, in a collateral proceeding, or by executive order. *Id.* at 486–87. Plaintiff has not alleged that the conviction or sentence has been invalidated.

With respect to Plaintiff's libel claim, the Court finds that it is well-settled that state law violations are not grounds for relief under § 1983. “[A] violation of state law alone does not give rise to a federal cause of action under § 1983.” *Malek v. Haun*, 26 F.3d 1013, 1016 (10th Cir. 1994). Even if Plaintiff could assert a valid libel claim, it would appear to be untimely. In any event, this Court is not obliged to exercise supplemental jurisdiction over any state law claims, even if valid, given that Plaintiff's federal constitutional claims are subject to dismissal. *See* 28 U.S.C. § 1367(c)(3). Under 28 U.S.C. § 1367(c)(3), “district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction.” “When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.” *Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011) (quotations omitted).

Plaintiff has failed to show good cause why his Complaint should not be dismissed for the reasons set forth in the Court's MOSC.

IT IS THEREFORE ORDERED BY THE COURT that this matter is **dismissed** for failure to state a claim.

IT IS SO ORDERED.

Dated January 13, 2023, in Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE