

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LUIS FERNANDEZ, :
 :
 Plaintiff, :
 : PRISONER
 v. : Case No. 3:04-CV-1664 (RNC)
 :
 DAVID M. HOLZBACH, et al., :
 :
 Defendants. :

ORDER OF DISMISSAL

Plaintiff, a Connecticut inmate proceeding pro se and in forma pauperis, was convicted in Connecticut Superior Court of five counts of sale of narcotics and five counts of possession of narcotics and was sentenced to a total effective term of imprisonment of twenty-eight years. The Connecticut Appellate Court affirmed the convictions, see State v. Fernanadez, 76 Conn. App. 183 (2003), and the Connecticut Supreme Court denied a petition for certification for appeal, see State v. Fernandez, 264 Conn. 901 (2003). Plaintiff then brought this action under 42 U.S.C. § 1983 against the judge who presided at the criminal trial, the prosecutor, numerous detectives who testified at the trial, and other state officials, claiming that he was convicted based on perjury and fabricated evidence pursuant to a conspiracy to violate his federal rights. Because his claims necessarily imply that he was wrongly convicted, they cannot be litigated under § 1983 unless and until he shows that the convictions have been invalidated by the grant of a writ of habeas corpus. See

Heck v. Humphrey, 512 U.S. 477, 489 (1994); see also Peay v. Ajello, 470 F.3d 65 (2d Cir. 2006). Plaintiff has not made this showing and the court's own research discloses no indication that such a writ has been issued. Accordingly, the complaint is hereby dismissed without prejudice pursuant to 28 U.S.C. § 1915.

So ordered at Hartford, Connecticut this 14th day of May 2007.

/s/
Robert N. Chatigny
United States District Judge