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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JUSTIN M. CORLISS,
Plaintiff

v.

SHERRI STEPHAN, et al.,
Defendants

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CIVIL NO. 3:CV-00-1278

(JUDGE CAPUTO)

FILED
SCRANTON

JAN 22 2001

ORDER

PER KAC
DEPUTY CLERK

BACKGROUND

Plaintiff Justin M. Corliss, an inmate at the State Correctional Institution, Frackville, Pennsylvania filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. Named as defendants in the complaint are Sherri Stephan, Assistant District Attorney for Monroe County; Thomas Lynot, Investigator for the District Attorney's Office; and Brian Germano, Tara Kirkendall, David Skutnik, and Peter Quigley, all Public Defenders appointed to represent Corliss at different stages of his criminal proceedings. Along with his complaint, Corliss filed this court's Application to Proceed In Forma Pauperis and Authorization Form. (Doc. Nos. 2 & 3.)

The Prison Litigation Reform Act (the "Act"), Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996), imposed new obligations on prisoners who file suit in federal court and wish to proceed in forma pauperis under 28 U.S.C. § 1915, e.g., the full filing fee ultimately

must be paid (at least in a non-habeas suit). Also, a new section was added which relates to screening complaints in prisoner actions.¹

The complaint will now be reviewed pursuant to the screening provisions of the Act. For the reasons set forth below, the instant complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B) (i).

When considering a complaint accompanied by a motion to proceed in forma pauperis, a district court may rule that process should not be issued if the complaint is malicious, presents an unquestionably meritless legal theory, or is predicated on clearly baseless factual averments. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989). Unquestionably meritless legal theories are those "in which either it is readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit. . . ." Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)). Clearly

1. Section 1915(e) (2), which was created by § 804(a) (5) of the Act, provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

baseless factual contentions describe scenarios "clearly removed from reality." Id. "[T]he frivolousness determination is a discretionary one," and trial courts "are in the best position" to determine when an indigent litigant's complaint is appropriate for summary dismissal. Denton v. Hernandez, 504 U.S. 25, 33 (1992). When reviewing a complaint for frivolity under § 1915(d), the court is not bound, as it is on a motion to dismiss, "to accept without question the truth of the plaintiff's allegations." Id. at 32.

Corliss alleges that all the named defendants "conspired to deprive plaintiff of his constitutionally protected rights". (Doc. No. 1). As a result, he seeks "compensatory and punitive damages from the defendants who have violated [his] constitutional right to due process of law, in the criminal case of Com. v. Corliss, 743 CR 1997 in Monroe County, where defendants secured a guilty verdict against the innocence of the plaintiff and continued to preserve this verdict. . . gravely injuring plaintiff with imprisonment in a state prison and but for their reckless and wanton disregard for plaintiff's constitutional rights, plaintiff would have obtained a complete dismissal, acquittal or arrest of judgment of all charges." Id.

DISCUSSION

A plaintiff, in order to state a viable § 1983 claim, must plead two essential elements: 1) that the conduct complained of was

committed by a person acting under color of state law, and 2) that said conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995); Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990).

It is well-settled that a public defender does not act under color of state law for purposes of § 1983 when performing traditional functions as counsel to a defendant in a criminal proceeding. Polk County v. Dodson, 454 U.S. 312, 325 (1981); Black v. Bayer, 672 F.2d 309, 311 (3d Cir.), cert. denied, 459 U.S. 916 (1982).

Accordingly, since the allegations against Attorneys Germano, Kirkendall, Skutnik, and Quigley are all premised on actions they took while serving as plaintiff's defense counsel, they are entitled to an entry of dismissal.

Moreover, a state prosecuting attorney is absolutely immune from liability for damages under § 1983 for acts such as the initiation of the prosecution and presentation of the state's case which are intimately associated with the judicial phase of the criminal process. Imbler v. Pachtman, 424 U.S. 409, 420 (1976); Urrutia v. Harrisburg County Police Dep't, 91 F.3d 451, 462 (3d Cir. 1996). However, only qualified immunity is available to prosecutors with regard to allegations based on their administrative and/or investigative duties.

See Hawk v. Brosha, 590 F. Supp. 337, 344 (E.D. Pa. 1984). Plaintiff's instant claim is "intimately associated with the judicial phase of the criminal process," see Imbler, 424 U.S. at 430 and, therefore, defendant Stephan is absolutely immune from damages.

In addition, a nonjudicial officer, such as an investigator for the district attorney's office, who undertakes ministerial actions intimately related to the judicial process at the express direction and control of the prosecutor, enjoys absolute immunity. Joseph v. Patterson, 795 F.2d 549, 560 (6th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); Forsyth v. Kleindienst, 599 F.2d 1203 (3d Cir. 1979), cert. denied sub. nom., Mitchell v. Forsyth, 453 U.S. 913, (1981).

Finally, in setting forth a claim of conspiracy, Corliss can not rely on broad or conclusory allegations. Dennis v. Sparks, 449 U.S. 24, 27-36 (1980). On the contrary, he must allege with particularity and present material facts which show that the purported conspirators reached some understanding or agreement or plotted, planned and conspired together to deprive plaintiff of a protected federal right. Chicarelli v. Plymouth Garden Apartments, 551 F. Supp. 532, 539 (E.D. Pa. 1982).

With all due respect to Corliss, the court finds incredible his suggestion that virtually every person even remotely involved with his criminal conviction was engaged in a corrupt plot to violate his civil

rights. The court therefore rejects his factual contentions as clearly baseless. See Young v. Kann, 926 F.2d 1396, 1405 n. 16 (3d Cir. 1991) (conspiracy claims which are based upon pro se plaintiff's subjective suspicions and unsupported speculation properly dismissed under § 1915(d)). The allegations in the complaint are vague and conclusory and do not present a cognizable § 1983 conspiracy claim.

Moreover, it is clear that Corliss cannot obtain relief under § 1983 on the grounds asserted in this case absent a successful challenge to the underlying conviction. Heck v. Humphrey, 512 U.S. 477 (1994).² Although it appears that Corliss is claiming that the deliberate mishandling of his case deprived him of a fair and adequate trial, he has not successfully challenged his conviction or sentence in state court.³

Since the plaintiff's complaint is "based on an indisputably meritless legal theory," it will be dismissed, without prejudice, as legally frivolous. Wilson, 878 F.2d 774. Under the circumstances,

2. The United States Supreme Court in Heck, announced that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by acts whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 477, 78.

3. In his complaint, plaintiff states that he is "currently pursuing post trial remedies". (Doc. No. 1).

the court is confident that service of process is not only unwarranted, but would waste the increasingly scarce judicial resources that § 1915 is designed to preserve. See Roman v. Jeffes, 904 F.2d 192, 195 n. 3 (3d Cir. 1990).

NOW, THIS ^{17th} DAY OF JANUARY, 2001, IT IS HEREBY ORDERED THAT:

1. The complaint is dismissed without prejudice as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).
2. The Clerk of Court shall close this case.
3. Any appeal from this order will be deemed frivolous, not taken in good faith and lacking probable cause.

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A. Richard Caputo
United States District Judge

ARC:dlb