

CPS-90

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 01-1507

JUSTIN M. CORLISS,  
Appellant

v.

SHERRI STEPHAN; THOMAS LYNOT;  
BRIAN GERMANO; TARA KIRKENDALL;  
DAVID SKUTNIK; PETER QUIGLEY

On Appeal From the United States District Court  
For the Middle District of Pennsylvania  
(D.C. Civ. No. 00-1278)  
District Judge: Honorable A. Richard Caputo

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action  
Under Third Circuit LAR 27.4 or I.O.P. 10.6  
January 25, 2002

BEFORE: SCIRICA, AMBRO and STAPLETON, CIRCUIT JUDGES

JUDGMENT

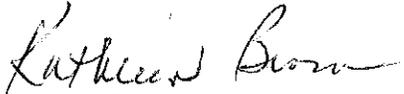
Received and Filed

*2/26/02*  
Marcia M. Walcott,  
Clerk

This cause came to be considered on the record from the United States District  
Court for the Middle District of Pennsylvania and was submitted for possible dismissal  
under 28 U.S.C. §1915(e)(2)(b). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the appeal is dismissed under 28  
U.S.C. § 1915(e)(2)(B). All of the above in accordance with the opinion of this Court.

ATTEST:

  
Acting Clerk

DATED: 20 February 2002

CPS-90

UNREPORTED - NOT PRECEDENTIAL

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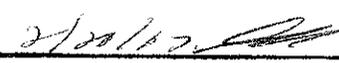
(Filed: February 20, 2002)

Received and Filed

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OPINION

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Marcia M. Waldron,  
Clerk

PER CURIAM.

Justin M. Corliss, a prisoner proceeding pro se, timely appeals from the District

Court's order dismissing his § 1983 complaint. Corliss filed this civil rights action pursuant to 42 U.S.C. § 1983 against Sherri Stephan ("Stephan"), Assistant District Attorney for Monroe County; Thomas Lynot ("Lynot"), an Investigator for the Monroe County District Attorney's Office; and Brian Germano ("Germano"), Tara Kirkendall ("Kirkendall"), David Skutnik ("Skutnik"), and Peter Quigley ("Quigley"), Monroe County Public Defenders, all of whom were appointed to represent Corliss at various stages of his criminal proceedings (collectively "defendants"). In his complaint, Corliss alleged that the defendants deprived him of his constitutional rights to due process, equal protection and effective assistance of counsel "when they knowingly conspired to charge, try, convict and have imprisoned an innocent man . . . knowing or having a duty to know that they were doing so against the rights of the plaintiff for reasons unrelated to the protection of society." Corliss sought compensatory and punitive damages, as well as a declaratory judgment that the defendants violated his civil rights.

The District Court dismissed Corliss' complaint, without prejudice, as legally frivolous pursuant to 28 U.S.C. § 1915 (e)(2)(B)(i).<sup>1</sup> We review such dismissals for abuse of discretion. See Denton v. Hernandez, 504 U.S. 25, 33 (1992). However, as this

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<sup>1</sup> Typically, an order dismissing a complaint must be with prejudice to be appealable. See Bhatla v. U.S. Capital Corp., 990 F.2d 780, 786 (3d Cir. 1993). However, a § 1915(e) dismissal without prejudice is "in essence final, because an in forma pauperis plaintiff must be afforded appellate review of a determination that he is required to pay all or a portion of the court costs and filing fees to file a claim, either because he does not qualify for in forma pauperis status or because his complaint is frivolous." Deutsch v. United States, 67 F.3d 1080, 1083 (3d Cir. 1995).

Court noted in Deutsch v. United States, 67 F.3d 1080, 1083 (3d Cir. 1995), “to the extent that the district court, in the course of its frivolousness determination, engaged in the choice, application, and interpretation of legal precepts, our review is plenary.”

To state a viable § 1983 claim, a plaintiff must allege facts showing a deprivation of a constitutional right, privilege or immunity by a person acting under color of state law. See Daniels v. Williams, 474 U.S. 327, 330 (1986). Corliss alleged that the defendants “conspired to deprive [him] of his constitutionally protected rights” when they “secured a guilty verdict against” him. Allegations of conspiracy may form the basis of a § 1983 claim. “However, a plaintiff must allege specific facts showing an agreement and concerted action amongst the defendants. ‘Conclusory allegations of conspiracy are insufficient to state a valid § 1983 claim.’” Tonkovich v. Kansas Bd. Of Regents, 159 F.3d 504, 533 (10th Cir.1998) (quoting Hunt v. Bennett, 17 F.3d 1263, 1266 (10th Cir. 1994)).

Here, as the District Court correctly concluded, Corliss presented nothing more than conclusory allegations of a conspiracy among the defendants. To state a conspiracy-based § 1983 claim, a plaintiff must allege the specific conduct violating his or her rights, the time and place of that conduct, and the identity of the responsible officials. See Oatess v. Sobolevitch, 914 F.2d 428, 431 n. 8 (3d Cir. 1990). Corliss failed to allege such facts, or any facts for that matter, to substantiate an allegation of conspiracy.

In addition, “a public defender does not act under color of state law when

performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." Polk County v. Dodson, 454 U.S. 312, 325 (1981). The allegations in Corliss' complaint against Germano, Kirkendall, Skutnik and Quigley involve their trial and appellate defense strategy, all traditional functions of a lawyer. As such, they were not acting under color of state law. See id. While allegations of a conspiracy may convert private conduct into state action, see Dennis v. Sparks, 449 U.S. 24 (1980), here, as previously discussed, Corliss failed to allege facts sufficient to state a claim that the defendants conspired to violate his civil rights. Accordingly, the claims against Germano, Kirkendall, Skutnik and Quigley were properly dismissed as frivolous pursuant to 28 U.S.C. § 1915 (e)(2)(B)(i).

It is well-settled that a state prosecuting attorney is absolutely immune from liability for damages under § 1983 for her actions performed in a "quasi-judicial" role. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976). This extends to activities taken while in court, such as the presentation of evidence or legal arguments, as well as out of court behavior "intimately associated with the judicial phases" of litigation. Id. at 431; see also Kulwicki v. Dawson, 969 F.2d 1454, 1463 (3d Cir. 1992). Here, the alleged improper actions taken by Stephan are all "intimately associated with the judicial phases" of litigation. Imbler, 424 at 431. As such, the District Court properly concluded Stepaen was entitled to immunity from Corliss' § 1983 damages claim.

Furthermore, investigators employed by a prosecutor's office who take

“ministerial actions intimately related to the judicial process pursuant to the express direction and control of a prosecutor, who is directing the activity in fulfillment of a quasi-judicial responsibility,” have absolute immunity from § 1983 claims for monetary damages. Ireland v. Tunis, 113 F.3d 1435, 1446 (6th Cir. 1997) (quoting Joseph v. Patterson, 795 F.2d 549, 560 (6th Cir. 1986)). Here, the allegations against Lynot contained in Corliss’ complaint all relate to actions taken while Lynot was assisting Stephan in preparation for trial. Accordingly, the District Court correctly concluded that Lynot was entitled to absolute immunity.

Finally, to the extent that Corliss seeks a declaratory judgment that his convictions were unlawfully obtained, such claims are not cognizable under 42 U.S.C. § 1983 if a judgment in his favor would necessarily imply the invalidity of his conviction or sentence, unless Corliss can demonstrate the convictions have previously invalidated on direct appeal, through post-conviction relief, or some other means. See Heck v. Humphrey, 512 U.S. 477, 487 (1994); Edwards v. Balisok, 520 U.S. 641, 648 (1997).

For the foregoing reasons, we will dismiss the appeal under 28 U.S.C. § 1915(e)(2)(B). We also deny Corliss’ motion for appointment of counsel. See Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993).

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TO THE CLERK:

Please file the foregoing opinion.

DATED: