

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILMER B. GAY,
WILLIAM C. MUELLER,
ALAN B. DAVIS,
JOHN W. TAYLOR,
ILLEGALLY CONVICTED AND
FALSELY IMPRISONED MEN,
WOMEN AND CHILDREN OF
PENNSYLVANIA, ALL OTHER
INCARCERATED PERSONS, RESIDENTS
& RESIDENT TAXPAYERS OF
PENNSYLVANIA AND THE UNITED
STATES,

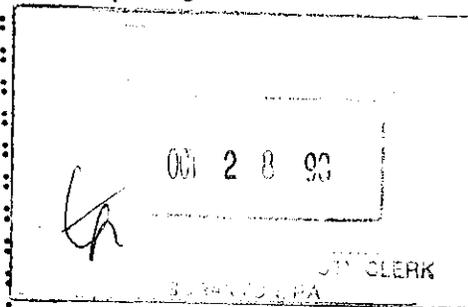
Plaintiffs,

v.

GUSTAVE DIAMOND, et al.,

Defendants,

CIVIL NO. 3:CV-93-1447
(Judge Kosik)



MEMORANDUM

The plaintiffs, proceeding pro se, filed this action and a motion to proceed in forma pauperis on September 21, 1993. The case was referred to Magistrate Judge J. Andrew Smyser. A review of the financial information provided to the court indicates that the individual plaintiffs should be permitted to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a), for the purposes of this action.¹

When a case proceeds in forma pauperis, a court may, pursuant to 28 U.S.C. § 1915(d), dismiss the case if it is

¹ See October 5, 1993 Magistrate's Report and Recommendation (Document 6) at p. 2. The Magistrate Judge noted that it would not be appropriate for the entire class of plaintiffs (all residents and taxpayers of the United States) to be granted IFP status, but that the four individual plaintiffs are so entitled.

satisfied that the action is frivolous or malicious. The appropriate time to make a decision to dismiss a case pursuant to § 1915(d) is prior to service of the complaint. Roman v. Jeffes, 904 F.2d 192, 195 (3d Cir. 1990). We are satisfied that the present action is frivolous. We will therefore dismiss the plaintiffs' complaint.

Under 28 U.S.C. § 1915(d), "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831 (1989). The statute accords judges the authority to dismiss a claim based on an indisputably meritless legal theory, such as a claim of infringement of a legal interest which clearly does not exist. See Nietzke, 490 U.S. at 329, 109 S.Ct. at 1833.

Plaintiffs' rambling twenty-four page narrowly-spaced complaint is as nebulous as it is lengthy. It contains vague accusations against various federal district judges, the Attorney General of Pennsylvania, the Supreme Court of Pennsylvania and the National Prison Project of the ACLU.² The claims are that the defendants are conspiring to spread epidemics of tuberculosis and other contagious diseases throughout the United States, to distribute illegal drugs and to commit other crimes including sexual assaults, beatings, maimings, murders, extortions and bribes.

² Plaintiffs are admonished for commenting on the religion of the ACLU defendant.

By way of relief, it is demanded that the court order the Attorney General of the United States (not a party to the action) to convene a special grand jury and task force, to order the IRS (not a party) to collect fifty million dollars from the defendants, to order the Governor of Pennsylvania (not a party) and the "Executive Branch of the Judiciary Committee" (not a party) to institute proceedings to remove the Attorney General of Pennsylvania from office, to order the reinstatement of a Western District federal civil action, to order the Attorney General of Pennsylvania and the Commissioner of Pennsylvania (not a party) and the Superintendents of the Pennsylvania state correctional institutions (not parties) not to transfer any state prisoners, and to issue a number of other declaratory and injunctive orders.

It is clear that plaintiffs' complaint presents a meritless legal theory and lacks a foundation in both law and fact. See Neitzke, 490 U.S. at 329, 109 S. Ct. at 1833. We will therefore dismiss the complaint pursuant to 28 U.S.C. § 1915(d). An appropriate order is attached.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILMER B. GAY, :
WILLIAM C. MUELLER, :
ALAN B. DAVIS, :
JOHN W. TAYLOR, :
ILLEGALLY CONVICTED AND :
FALSELY IMPRISONED MEN, : CIVIL NO. 3:CV-93-1447
WOMEN AND CHILDREN OF : (Judge Kosik)
PENNSYLVANIA, ALL OTHER :
INCARCERATED PERSONS, RESIDENTS :
& RESIDENT TAXPAYERS OF :
PENNSYLVANIA AND THE UNITED :
STATES, :
:
Plaintiffs, :
:
v. :
:
GUSTAVE DIAMOND, et al., :
:
Defendants, :

ORDER

AND NOW, this 28th day of October 1993, IT IS HEREBY

ORDERED THAT:

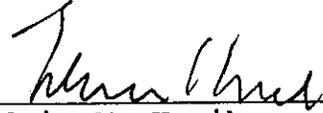
[1] the October 5, 1993 Report and Recommendation of the Magistrate Judge (Document 6) is adopted;

[2] the plaintiffs are permitted to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a);

[3] the plaintiffs' complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(d);

[4] the Clerk of Court is directed to close this case and to provide a copy of this Memorandum and Order to Magistrate Judge J. Andrew Smyser; and

[5] any appeal of this Order shall be deemed frivolous, without probable cause and lacking in good faith.



Edwin M. Kosik
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILMER B. GAY, : CIVIL NO. 3:CV-93-1447
WILLIAM C. MUELLER, :
ALAN B. DAVIS, :
JOHN W. TAYLOR, :
ILLEGALLY CONVICTED AND :
FALSELY IMPRISONED MEN, :
WOMEN AND CHILDREN OF :
PENNSYLVANIA, :
ALL OTHER INCARCERATED :
PERSONS, RESIDENTS & RESIDENT :
TAXPAYERS OF PA & OF THE U.S., :

Plaintiffs

(Judge Kosik)

v.

GUSTAVE DIAMOND, :
WILLIAM L. STANDISH, :
GARY L. LANCASTER, :
ALL DISTRICT COURT JUDGES :
AND PERSONS ACTING FOR OR AS :
AGENTS THEREWITH, :
ERNEST PREATE, :
ALL DEPUTY ATTORNEY GENERALS :
AND PERSONS ACTING FOR OR AS :
AGENTS THEREWITH, :
CHARLES W. JOHNS, :
ALVIN BRONSTEIN, :

Defendants

FILED
HARRISBURG, PA

OCT -5 1993

LANCE S. WILSON CLERK
PER

REPORT AND RECOMMENDATION

This "taxpayers class action" complaint was filed on September 20, 1993. The plaintiffs are the illegally convicted and falsely imprisoned men, women and children of Pennsylvania and all other incarcerated persons, residents and resident taxpayers of Pennsylvania and of the United States. In addition to this rather inclusive group of plaintiffs, there are four other

plaintiffs: Wilmer B. Gay, William C. Mueller, Alan B. Davis and John W. Taylor. The defendants are federal judges, the Attorney General of Pennsylvania and members of his staff, the former Attorney General of Pennsylvania, the Prothonotary of the Supreme Court of Pennsylvania and members of his staff, and the National Prison Project of the ACLU.

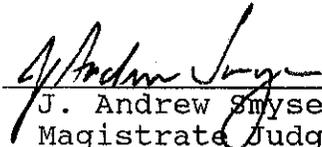
The plaintiffs seek leave to proceed in forma pauperis. 28 U.S.C. §1915(d). We must determine whether the plaintiffs are unable to pay the filing fee and whether the complaint is frivolous or malicious. 28 U.S.C. §§1915(a), (d). We address first the 28 U.S.C. §1915(a) question. Insofar as the plaintiffs seek to proceed as a class of plaintiffs comprising all residents and all taxpayers of the United States, as is indicated by the plaintiffs' caption, it is self-apparent that the plaintiffs have no valid claim of entitlement under 28 U.S.C. §1915 to proceed in forma pauperis. However, the four individual plaintiffs have established individually and collectively their need to proceed in forma pauperis.

Next, we look to 28 U.S.C. §1915(d). The complaint is manifestly frivolous and malicious. The claim is that the defendants are conspiring to spread epidemics of tuberculosis and other contagious diseases throughout the United States, to distribute illegal drugs and to commit other crimes including

sexual assaults, beatings, maimings, murders, extortions and briberies. By way of relief, it is demanded that the court order the Attorney General of the United States (who is not a party) to convene a special grand jury and task force, to order the Internal Revenue Service (which is not a party) to collect fifty million dollars from the defendants, to order the Governor of Pennsylvania (who is not a party) and the "Executive Branch of the Judiciary Committee" (which is not a party) to institute proceedings to remove the Attorney General of Pennsylvania from Office, to order the reinstatement of a particular W.D.Pa. federal civil action, to order the Attorney General of Pennsylvania and the Commissioner of Pennsylvania (not a party) and the Superintendents of the Pennsylvania state correctional institutions (who are not parties) not to transfer any state prisoner from one prison to another, and to issue a number of other declaratory and injunctive orders.

There is no basis in law for the kinds of claims that the plaintiffs here seek to pursue. These claims are therefore subject to summary dismissal at this early stage pursuant to 28 U.S.C. §1915(d). Neitzke v. Williams, 490 U.S. 319 (1989); Denton v. Hernandez, ___ U.S. ___; 60 L.W. 4346 (1992).

It is recommended that the plaintiffs be granted leave to proceed in forma pauperis and that the complaint be dismissed as frivolous pursuant to 28 U.S.C. §1915(d).



J. Andrew Smyser
Magistrate Judge

Dated: October 5, 1993.