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

ZACHARY T. WILSON : CIVIL ACTION
: :
v. : :
: :
JOHN FLEMING, et al. :

NO. 98-2481

FILED

OCT 29 1998

By MICHAEL E. KUNZ, Clerk
Dep. Clerk

MEMORANDUM

GILES, J. OCTOBER , 1998

Plaintiff, an indigent prisoner at the State Correctional Institution at Graterford (S.C.I. Graterford),¹ has filed a pro se 42 U.S.C. § 1983 civil rights complaint against Philadelphia Police Sergeant John Fleming, the City of Philadelphia, the Commonwealth of Pennsylvania, the Department of Corrections, SmithKline Beecham Laboratories, and Superintendent Donald T. Vaughn and numerous other employees of S.C.I. Graterford. Plaintiff alleges that Sergeant John Fleming conspired "with others" to have him falsely convicted and incarcerated. He further alleges that Sergeant Fleming and the other defendants in this action are drugging his food and subjecting him to hypnosis, which has caused him great "pain and suffering." As relief, plaintiff seeks damages and the discharge of all criminal convictions.

I. DISCUSSION

A. Claim for Damages for False Conviction

1. Plaintiff's motion to proceed in forma pauperis was granted by order dated October 14, 1998.

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In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions 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, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Id. at 486-87 (footnotes omitted). Further, district courts are directed to "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." Id. Unless the plaintiff can demonstrate that the conviction or sentence has been invalidated, the complaint must be dismissed. Plaintiff's claim for damages for Sergeant John Fleming's alleged conspiracy to present false testimony against him, if proven, would "necessarily imply the invalidity" of his conviction. Id. Since plaintiff has not demonstrated that his conviction or sentence has been invalidated, his claim for damages for false conviction must be dismissed without prejudice. See Shelton v. Macey, 883 F. Supp. 1047, 1050 (E.D. Pa. 1995) (determining that Heck mandates a dismissal of plaintiff's claim without prejudice to renew if and when his state court conviction is legally invalidated).

B. The Commonwealth of Pennsylvania and Department of Corrections

Plaintiff's claim for damages against the Commonwealth of Pennsylvania and the Department of Corrections must be dismissed as frivolous because the Eleventh Amendment to the

United States Constitution prohibits actions for damages against a state and its agencies in federal court unless the state has waived its immunity. U.S. Const. amend. XI; Edelman v. Jordan, 415 U.S. 651 (1974) ("a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment"). Moreover, the United States Supreme Court has held that "[a] state is not a person within the meaning of § 1983." Will v. Michigan Dept. of State Police, 491 U.S. 58, 63 (1989). There is no waiver of state immunity applicable to this case.

C. The City of Philadelphia

Plaintiff's damages claim against the City of Philadelphia also must be dismissed. Municipal liability cannot be imposed absent an allegation that unlawful actions were taken pursuant to a municipality's policies, practices, customs, regulations or enactments. Monell v. Department of Social Services, 436 U.S. 658 (1978). No such allegation has been made in this complaint.

D. SmithKline Beecham Laboratories

Plaintiff's claim that SmithKline Beecham Laboratories "used plaintiff as a guine [sic] pig" must be dismissed. In order to bring suit under § 1983, plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. Kost v. Kozakiewicz, 1 F.3d 176, 185 (3d Cir. 1993) (listing elements of a § 1983 claim). Since this defendant is not a person and does not act under color of state

law, it is not liable in a civil rights action brought pursuant to § 1983.

E. Discharge of Criminal Convictions

Plaintiff's request for relief in the nature of discharge of criminal convictions may only be brought in a habeas corpus action, not a § 1983 action. Preiser v. Rodriguez, 411 U.S. 475 (1973). For this reason, plaintiff's request for such relief must be dismissed without prejudice to its reassertion in the appropriate form of legal action.

II. CONCLUSION

Based on the foregoing, the claims described above are dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e). Neitzke v. Williams, 490 U.S. 319, 327 (1989) (dismissal as frivolous is appropriate when plaintiff has advanced an "indisputably meritless legal theory.") An appropriate order follows.

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ORDER

AND NOW, this 27th day of October 1998, it hereby is ORDERED as follows:

FILED
OCT 29 1998
MICHAEL E. KONZ, Clerk
Dep. Clerk

1. For the reasons stated in the attached Memorandum, Plaintiff's claims against the City of Philadelphia, the Commonwealth of Pennsylvania, the Department of Corrections, and SmithKline Beecham Laboratories are DISMISSED AS FRIVOLOUS pursuant to 28 U.S.C. § 1915(e)(2)(B)(I). Plaintiff's claims that he was falsely convicted and his request for discharge of his criminal convictions are DISMISSED AS FRIVOLOUS WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

2. Plaintiff's claims that he has been subjected to drugging and hypnosis while at SCI-Graterford are DISMISSED AS FRIVOLOUS WITH LEAVE TO REPLEAD, pursuant to 28 U.S.C. § 1915(e)(2)(B)(I). Factual frivolousness includes claims that are fanciful, fantastic, or delusional or claims in which the facts rise to the level of the irrational or the wholly incredible. Denton v. Henderson, 504 U.S. 25, 32-33 (1992). The plaintiff's bare allegations of being drugged and hypnotized indicate just such a fanciful scenario, making dismissal proper.

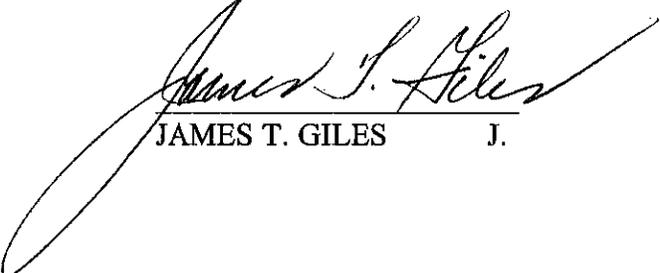
It is possible that these frivolous factual allegations may be remedied through more specific, detailed pleadings. Denton, 504 U.S. at 34. Therefore, plaintiff is granted leave to replead only his claims that he was subjected to drugging and hypnosis. The new pleading must describe in some detail the incidents or occurrences of drugging or hypnosis, including the

specific defendant(s) who committed certain acts, the specific acts committed, the time and place of such occurrences, and the factual basis for the plaintiff's knowledge of the incident.

3. Plaintiff shall have until November 23, 1998 to file his amended complaint.

4. This Court's Order of October 14, 1998, granting plaintiff's Motion to Proceed In Forma Pauperis and setting a schedule for the payment of filing fees pursuant to 28 U.S.C. § 1915(b), hereby is VACATED.

BY THE COURT:


JAMES T. GILES J.

copies by FAX on
to

10-30-98
C.B.G. to
J.P.
J.G.