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

FILED

EUGENE ROBINSON

CIVIL ACTION

v.

LEON O. DARK

NOV 30 1995

By M. E. Kunz: Clerk
Dep. Clerk

NO. 95-7283

MEMORANDUM

ROBRENO, J.

NOVEMBER 29th, 1995

Plaintiff, an inmate, has filed a pro se 42 U.S.C. § 1983 civil rights complaint against Philadelphia Court of Common Pleas Administrator Leon O. Dark. Plaintiff alleges that Mr. Dark has not responded to his request for transcripts of his criminal trial that he requires to file a petition under the Post Conviction Relief Act. Plaintiff seeks an order requiring that the defendant produce the aforementioned transcripts.

With his complaint, plaintiff filed a request for leave to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis is granted. However, for the reasons which follow, the complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d).

The United States Supreme Court has held that an indigent defendant directly appealing a criminal conviction has a constitutional right to a copy of a transcript at government expense. Griffin v. Illinois, 351 U.S. 12 (1956). For virtually all other purposes a free transcript is a privilege committed to the discretion of the trial judge. United States v. MacCollum,

426 U.S. 317 (1976). In order to bring suit under § 1983, plaintiff must allege that a person acting under color of state law deprived him of a right secured by the constitution or federal law. Kost v. Kozakiewicz, 1 F.3d 176, 185 (3d Cir. 1993). As plaintiff has indicated that he requested a copy of his trial transcript for the purpose of filing a Post Conviction Relief Act petition, whether to grant the request is a matter within the court's discretion and not a constitutional right. Thus, the defendant's alleged failure to respond to plaintiff's request does not state a cognizable claim under § 1983.¹

An appropriate Order follows.

1. Since defendant Dark is a court administrator and not the judicial officer who presided at the plaintiff's trial, defendant Dark is not authorized to furnish plaintiff a free transcript of his trial in the absence of a mandate that he does so by the presiding judicial officer. Therefore, assuming, arguendo, that plaintiff had asserted a cognizable claim under § 1983, defendant Dark would not have been the person who acting under color of law deprived plaintiff of the enjoyment of the right to receive a free copy of his trial transcript since defendant Dark's duties are simply ministerial.

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O R D E R

AND NOW, this 29TH day of November, 1995, since

it appears plaintiff is unable to prepay the costs of commencing
this suit pursuant to 28 U.S.C. § 1915(a),

IT IS ORDERED that:

1. Leave to proceed in forma pauperis is GRANTED.
2. This complaint is DISMISSED as frivolous pursuant to
28 U.S.C. § 1915(d).

Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

11/31/95
copy P.R.
DARK

mc
h (emp)
(term doc)
(term dcl)
STATS-7/P GRANTED
CASE CLOSED

X