



(PC) Johnson v. Sacramento County et al

2014 | Cited 0 times | E.D. California | January 13, 2014

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH D. JOHNSON,

Plaintiff, v. SACRAMENTO COUNTY,

Defendants.

No. 2:13-cv-0641 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

SCREENING REQUIREMENT The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims granted, or that seek monetary relief from a defendant who is immune from such relief. See 28

U.S.C. § 1915A(b)(1) & (2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at 1227. *n Bell Atlantic*

Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must contain more *Bell Atlantic*, 550

U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital Trustees*, 425 U.S. 738,



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740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). The Civil Rights Act under which this action was filed provides as follows:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or

omits to perform an act which he is legally required to do that causes the deprivation of which Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). // Moreoever, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisory position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

In the present case, plaintiff has named Sacramento County, the Sacramento County Public Defenders and Assistant Public Defenders as the defendants in this action. In his complaint, plaintiff claims that he was denied his constitutional right to a fair trial, received ineffective assistance of counsel during his state court criminal proceedings, and that there was insufficient evidence to support a guilty verdict in his criminal case. Plaintiff claims that the to his constitutional rights and have deprived him of his rights under the Fourteenth Amendment Due Process Clause. (Compl. at 1-6 & Attachs.)

DISCUSSION relief. 1

A civil rights action is the proper mechanism for a prisoner seeking to challenge the conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). In contrast, habeas corpus proceedings are the proper mechanism for a prisoner seeking to challenge the fact or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, plaintiff claims court. However, plaintiff has not indicated that the challenged felony conviction has been

overturned or otherwise invalidated.

Under these circumstances, the court cannot allow plaintiff to proceed in this civil rights action. See Wilkinson v. Dotson, 544 U.S. 74, 81- 1 Plaintiff has consented to Magistrate Judge jurisdiction over



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this action pursuant to 28 U.S.C. § 636. (Doc. No. 7) barred (absent prior invalidation) - no matter the relief sought (damages or equitable relief), no matter proceedings) - if success in that action would necessarily demonstrate the invalidity of Heck v. Humphrey, 512 U.S. 477 (1994) (a state prisoner may not recover damages under § 1983 for allegedly unconstitutional on or other basis for confinement has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal writ of habeas corpus). 2

Plaintiff is advised that a writ of habeas corpus is his sole remedy by which to attack in federal court his state court criminal conviction and sentence. 3

CONCLUSION Accordingly, IT IS HEREBY ORDERED that: *ma pauperis* (Doc. No. 6) is denied; 2. All pending motions (Doc. Nos. 2, 5 & 8) are denied as moot; and 3. This action is dismissed without prejudice. Dated: January 10, 2014

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2 Moreover, public defenders are not state actors within the meaning of §1983 when performing traditional lawyer duties in any event. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir. 2003) (en banc); see also *Cox v. Hellerstein*, 685 F.2d 1098, 1098-99 (9th Cir. 1982). 3 It appears from court records that plaintiff has previously tried to challenge his underlying judgment of conviction and sentence several times in this court. Most recently, in Case No. 2:13- cv-0880 AC P, plaintiff filed a petition for writ of habeas corpus asserting similar claims to those asserted in his complaint in this civil rights action. The court transferred the petition to the Ninth Circuit Court of Appeals because the petition was second or successive. Plaintiff is reminded that, insofar as he wishes to challenge his judgment of conviction again in this court, he will first need to obtain an order from the Ninth Circuit Court of Appeals authorizing him to file a second or successive petition.

