

CLD-065

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14-3947

CLARENCE HOFFERT,
Appellant

v.

THE COMMONWEALTH OF PENNSYLVANIA

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 1-13-cv-00162)
District Judge: Honorable Mark R. Hornak

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
December 18, 2014

Before: FUENTES, GREENAWAY, JR. and VANASKIE, Circuit Judges

(Opinion filed: January 6, 2015)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Clarence Hoffert, a Pennsylvania inmate proceeding pro se and in forma pauperis, appeals from the District Court's order dismissing his complaint. For the reasons set forth below, we will summarily affirm.

I.

Hoffert brought this 42 U.S.C. § 1983 action to remedy his allegedly illegal incarceration. For relief, he seeks immediate release and damages. The only named defendant in his complaint is the Commonwealth of Pennsylvania.

The District Court dismissed Hoffert's complaint on two grounds. First, the Commonwealth is immune from suit under the Eleventh Amendment. Second, Hoffert's claim failed as a matter of law because claims for immediate release from illegal detention are not cognizable under § 1983. Hoffert timely appealed.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and our review of the District Court's dismissal order is plenary. Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We will summarily affirm the District Court because this appeal does not present a substantial question. See 3d Cir. LAR 27.4; 3d Cir. I.O.P. 10.6.

"Unless a State has waived its Eleventh Amendment immunity or Congress has overridden it, . . . a State cannot be sued directly in its own name regardless of the relief

sought.” Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985). Pennsylvania has maintained its immunity. See 42 Pa. Cons. Stat. § 8521(b); Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981). Accordingly, the District Court correctly ruled that Hoffert’s complaint should be dismissed because the only defendant is immune from suit.

Even if the Commonwealth were subject to suit, the District Court correctly concluded that Hoffert’s claim is not cognizable under § 1983. “[W]henever the challenge ultimately attacks the ‘core of habeas’—the validity of the continued conviction or the fact or length of the sentence—a challenge, however denominated and regardless of the relief sought, must be brought by way of a habeas corpus petition.” Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002); see also Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that a § 1983 plaintiff seeking to recover damages for an allegedly unlawful conviction or sentence must first prove that the conviction or sentence has been reversed, expunged, declared invalid, or called into question). Hoffert seeks immediate release and damages for his allegedly illegal imprisonment. As our review in Leamer makes clear, such a § 1983 claim is barred by Supreme Court precedent. 288 F.3d at 540-42.

Hoffert’s filings suggest that he may have wished to name additional defendants. “[I]n civil rights cases district courts must offer amendment—irrespective of whether it is requested—when dismissing a case for failure to state a claim unless doing so would be inequitable or futile.” Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007); Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir.

2002). Because Hoffert's claim fails as a matter of law, however, amendment would be futile. As such, the District Court properly dismissed the complaint without granting leave to amend.

III.

There being no substantial question presented on appeal, we will summarily affirm the judgment of the District Court.