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

CHANNING WILSON GREEN,)	1:08cv1673 LJO DLB
)	
)	
)	FINDINGS AND RECOMMENDATION
Plaintiff,)	REGARDING DISMISSAL OF ACTION
vs.)	
)	
TIMOTHY W. SALTER, et al.,)	
Defendants.)	

Plaintiff Channing Wilson Green (“Plaintiff”), appearing pro se and inform a pauperis, filed the instant civil rights action on November 3, 2008. He names Deputy District Attorney Laugero, Superior Court Judge Timothy W. Salter, and Deputy Sheriff Robert Rowe as Defendants.

DISCUSSION

A. Screening Standard

Pursuant to [28 U.S.C. § 1915\(e\)\(2\)](#), the court must conduct an initial review of the complaint for sufficiency to state a claim. The court must dismiss a complaint or portion thereof if the court determines that the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)](#). If the court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

1 [Fed. R. Civ. P. 8\(a\)](#) provides:

2 A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-
3 claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon
4 which the court's jurisdiction depends, unless the court already has jurisdiction and the claim
5 needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the
claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the
relief the pleader seeks. Relief in the alternative or of several different types may be
demanded.

6 A complaint must contain a short and plain statement as required by [Fed. R. Civ. P. 8\(a\)\(2\)](#).

7 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and
8 state the elements of the claim plainly and succinctly. [Jones v. Community Redev. Agency, 733 F.2d](#)
9 [646, 649 \(9th Cir. 1984\)](#). Plaintiff must allege with at least some degree of particularity overt acts
10 which the defendants engaged in that support Plaintiff's claim. [Id.](#) Although a complaint need not
11 outline all elements of a claim, it must be possible to infer from the allegations that all elements exist
12 and that there is entitlement to relief under some viable legal theory. [Walker v. South Cent. Bell](#)
13 [Telephone Co., 904 F.2d 275, 277 \(5th Cir. 1990\)](#); [Lewis v. ACB Business Service, Inc., 135 F.3d](#)
14 [389, 405-06 \(6th Cir. 1998\)](#).

15 In reviewing a complaint under this standard, the Court must accept as true the allegations of
16 the complaint in question, [Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740 \(1976\)](#),
17 construe the pro se pleadings liberally in the light most favorable to the [Plaintiff, Resnick v. Hayes,](#)
18 [213 F.3d 443, 447 \(9th Cir. 2000\)](#), and resolve all doubts in the Plaintiff's favor, [Jenkins v.](#)
19 [McKeithen, 395 U.S. 411, 421 \(1969\)](#).

20 B. Plaintiff's Allegations

21 Plaintiff brings this action against Deputy District Attorney Laugero, Judge Timothy W.
22 Salter and Deputy Sheriff Robert Rowe. He alleges that Defendants Laugero and Rowe conspired in
23 an attempt to frame Plaintiff for robbery. He also alleges that he was "racially profiled" and
24 "selected" for the crime "due to all individuals coercing and encouraging victim to specifically
25 identify" Plaintiff. Compliant, at 3. Plaintiff requests compensation for lost income and medical
26 treatment, and asks the Court to make "an example" of the Defendants who allegedly pursued a
27 baseless claim.

1 C. Analysis

2 1. Challenge of Underlying Criminal Action

3 When a prisoner challenges the legality or duration of his custody, or raises a constitutional
4 challenge which could entitle him to an earlier release, his sole federal remedy is a writ of habeas
5 corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990),
6 cert. denied 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an allegedly
7 unconstitutional conviction or imprisonment, “a § 1983 plaintiff must prove that the conviction or
8 sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state
9 tribunal authorized to make such determination, or called into question by a federal court’s issuance
10 of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). “A
11 claim for damages bearing that relationship to a conviction or sentence that has not been so
12 invalidated is not cognizable under § 1983.” Id. at 488.

13 Plaintiff may not pursue the instant damages action, which raises issues as to the
14 constitutionality of the criminal proceeding against him, because he has not alleged that his
15 conviction has been overturned. If Plaintiff wishes to challenge his conviction and/or custody
16 duration, he must do so via a petition for writ of habeas corpus.

17 2. Defendants Salter and Laugero

18 Moreover, Plaintiff cannot state a claim as to Defendants Slater, a state court judge, and
19 Laugero, a deputy district attorney. State court judges and prosecutors are immune from liability
20 under 42 U.S.C. § 1983. See Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 922 (9th Cir.
21 2004) (“Absolute immunity is generally accorded to judges and prosecutors functioning in their
22 official capacities”); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir.1986) (holding that judges and
23 prosecutors are immune from liability for damages under section 1983).

24 **RECOMMENDATION**

25 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed, without
26 prejudice, based on Plaintiff’s failure to state a claim upon which relief may be granted under section
27 1983. Plaintiff cannot cure the above deficiencies and leave to amend would be futile.

