

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

KEVIN M. MOORE,

Plaintiff,

No. CIV S-10-0170 DAD P

vs.

PAULA J. HENSLEY,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a county jail inmate proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 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 that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
15 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must accept as true
16 the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425
17 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and
18 resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

19 The Civil Rights Act under which this action was filed provides as follows:

20 Every person who, under color of [state law] . . . subjects, or causes
21 to be subjected, any citizen of the United States . . . to the
22 deprivation of any rights, privileges, or immunities secured by the
23 Constitution . . . shall be liable to the party injured in an action at
24 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
26 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
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
2 omits to perform an act which he is legally required to do that causes the deprivation of which
3 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 Moreover, supervisory personnel are generally not liable under § 1983 for the
5 actions of their employees under a theory of respondeat superior and, therefore, when a named
6 defendant holds a supervisory position, the causal link between him and the claimed
7 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
8 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
9 allegations concerning the involvement of official personnel in civil rights violations are not
10 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

11 **PLAINTIFF’S COMPLAINT**

12 Plaintiff has named Solano County Deputy Public Defender Paula J. Hensley as
13 the sole defendant in this action. In his brief complaint, plaintiff alleges that Public Defender
14 Hensley has provided him ineffective assistance of counsel in violation of his constitutional
15 rights. In the “Relief” section of the form complaint, asking plaintiff to state briefly what he
16 wants the court to do for him, plaintiff requests that this court impose sanctions on Public
17 Defender Hensley and award plaintiff two million dollars in compensatory damages as well as
18 two million dollars in punitive damages. (Compl. at 3.)

19 **ANALYSIS**

20 Under 42 U.S.C. § 1983, plaintiff has a right to be free from violations of
21 constitutional guarantees by those acting under color of state law. Van Ort v. Stanewich, 92 F.3d
22 831, 835 (9th Cir. 1996). However, plaintiff is advised that public defenders are not “state
23 actors” for purposes of § 1983. See Polk County v. Dodson, 454 U.S. 312, 325 (1981); Miranda
24 v. Clark County, 319 F.3d 465, 468 (9th Cir. 2003) (en banc); see also Briley v. State of
25 California, 564 F.2d 849, 855 (9th Cir. 1977) (privately-retained attorney does not act under

26 //

1 color of state law). Accordingly, the court concludes that plaintiff's complaint should be
2 dismissed for failure to state a cognizable claim.

3 Plaintiff is advised that a civil rights action is the proper mechanism for a prisoner
4 seeking to challenge the conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th
5 Cir. 1991). In contrast, habeas corpus proceedings are the proper mechanism for a prisoner
6 seeking to challenge the fact or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475,
7 484 (1973). To the extent that plaintiff is seeking to overturn his underlying state court
8 conviction due to the alleged ineffective assistance of counsel provided by his public defender, a
9 writ of habeas corpus is his sole remedy in federal court and such habeas relief may be pursued
10 only after exhausting all of his constitutional claims in state court.¹

11 CONCLUSION

12 For the reasons set forth above, IT IS HEREBY ORDERED that the Clerk of the
13 Court is directed to randomly assign a United States District Judge to this action.

14 IT IS HEREBY RECOMMENDED that:

- 15 1. Plaintiff's January 21, 2010 motion to proceed in forma pauperis (Doc. No. 2)
16 be denied; and
- 17 2. This action be dismissed for failure to state a cognizable claim.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-

20
21 ¹ In the event that plaintiff's underlying criminal proceedings in state court are ongoing,
22 plaintiff is advised that this court is barred from directly interfering with those proceedings,
23 absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 46 (1971); Mann v.
24 Jett, 781 F.2d 1448, 1449 (9th Cir. 1985) ("When a state criminal prosecution has begun the
25 Younger rule directly bars a declaratory judgment action" as well as a § 1983 action for damages
26 "where such an action would have a substantially disruptive effect upon ongoing state criminal
proceedings."). Here, plaintiff has not alleged extraordinary circumstances. Younger, 401 U.S.
at 48-50. Of course, plaintiff may also raise his constitutional claims in any ongoing criminal
proceedings in state court. Lebbos v. Judges of the Superior Court, 883 F.2d 810, 813 (9th Cir.
1989) ("Abstention is appropriate based on 'interest of comity and federalism [that] counsel
federal courts to abstain from jurisdiction whenever federal claims have been or could be
presented in ongoing state judicial proceedings that concern important state interests.'").

1 one days after being served with these findings and recommendations, plaintiff may file written
2 objections with the court. The document should be captioned "Objections to Magistrate Judge's
3 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
4 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
5 F.2d 1153 (9th Cir. 1991).

6 DATED: January 28, 2010.

7
8 
9 _____
10 DALE A. DROZD
11 UNITED STATES MAGISTRATE JUDGE

9 DAD:9
10 moor0170.56

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26