

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

LAMONT A. HOUZE II,

Plaintiff,

No. 2:10-cv-3076 LKK KJN P

vs.

COUNTY OF SACRAMENTO, and
THE STATE OF CALIFORNIA,

Defendants.

ORDER

_____/

Plaintiff, who is not incarcerated, proceeds without counsel in this action filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983, together with a motion to proceed in forma pauperis. Plaintiff appears to challenge his conviction for stalking,¹ including the nature of the charge (misdemeanor versus felony) and the evidence relied upon to reach the conviction, the duration of plaintiff’s sentence, and the calculation of his parole date, based on claims that his rights to due process and equal protection have been violated. Plaintiff seeks fifty million dollars in damages and “an injunctive relief order halting the invasive search and seizure non revocable parole this plaintiff is serving . . .” (sic). (Complaint, Dkt. No. 1-1 at 4.)

¹ Plaintiff states that he was convicted pursuant to California Penal Code section 649.9 (which does not exist), but appears to reference California Penal Code section 646.9 (stalking).

1 Review of plaintiff’s complaint demonstrates that the claims asserted therein may
2 not be cognizable in a federal civil rights action. In Heck v. Humphrey, 512 U.S. 477 (1994), the
3 United States Supreme Court held that a civil rights action premised on an allegedly
4 unconstitutional conviction or imprisonment cannot be maintained absent proof “that the
5 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
6 invalid by a state tribunal authorized to make such determination, or called into question by a
7 federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck, 512 U.S. at 486.
8 Under Heck, the court is required to determine whether a judgment in plaintiff’s favor in this
9 case would necessarily invalidate his conviction or sentence. Id. If it would, the complaint must
10 be dismissed unless the plaintiff can show that the conviction or sentence has been invalidated.
11 Id.; see also Osborne v. District Attorney’s Office for Third Judicial District, 423 F.3d 1050,
12 1053 (9th Cir. 2005) (Heck test applies to civil rights actions for injunctive relief as well as those
13 for money damages).

14 Examination of plaintiff’s complaint indicates that a judgment in plaintiff’s favor
15 would necessarily invalidate his conviction and/or sentence, and therefore appears to be “Heck-
16 barred.” So construed, plaintiff’s complaint must be dismissed unless plaintiff can demonstrate
17 that his conviction or sentence has already been invalidated. Absent such a showing, plaintiff is
18 precluded from challenging, in a federal civil rights action, his conviction, sentence or parole.²

19 In contrast, a federal challenge to the fact of conviction or the length of
20 confinement (sentence and/or parole) may generally be raised in a petition for writ of habeas
21 corpus pursuant to 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475 (1973). An individual
22 serving parole satisfies the “in custody” requirement of this statute. See Jones v. Cunningham,
23 371 U.S. 236, 242-43 (1963) (parole “significantly restrain[s] petitioner’s liberty” sufficient to
24

25 ² Moreover, plaintiff is informed that he must exhaust available administrative remedies
26 before filing a federal civil rights action. 42 U.S.C. § 1997e(a); Booth v. Churner, 532 U.S. 731,
741 (2001).

1 satisfy “ ‘custody’ ... within the meaning of the habeas corpus statute”); Williamson v. Gregoire,
2 151 F.3d 1180, 1182 (9th Cir. 1998). It is possible, therefore, that the appropriate mechanism for
3 plaintiff to pursue his claims is a petition for writ of habeas corpus. Plaintiff is cautioned,
4 however, that a party is required to exhaust state court remedies before pursuing habeas relief in
5 federal court. 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-16 (1982).

6 For these reasons, plaintiff’s complaint will be dismissed, and plaintiff will be
7 given the opportunity to file one of the following, consistent with the principles set forth in this
8 order: (1) an amended civil rights complaint that states a potentially cognizable federal claim,
9 (2) a properly framed habeas petition that demonstrates exhaustion of state court remedies, or
10 (3) a request that this action be voluntarily dismissed pursuant to Federal Rule of Civil Procedure
11 41(a). The court will defer ruling on plaintiff’s application to proceed in forma pauperis until
12 plaintiff’s next filing.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Plaintiff’s request to proceed in forma pauperis (Dkt. No. 2) is deferred
15 pending the court’s review of plaintiff’s next filing;

16 2. Plaintiff’s complaint is dismissed;

17 3. Plaintiff is granted thirty days from the date of this order to file an amended
18 pleading, as set forth above, or a request to voluntarily dismiss this action pursuant to
19 Fed. R. Civ. P. 41(a);

20 4. Failure to respond to this order will result in a recommendation that this action
21 be dismissed; and

22 ////

23 ////

24 ////

25 ////

26 ////

1 5. The Clerk of the Court is directed to send plaintiff the forms used in this
2 district for filing a civil rights complaint and a petition for writ of habeas corpus (plaintiff must
3 make a choice and file only one completed pleading, or a request for voluntary dismissal).

4 SO ORDERED.

5 DATED: February 14, 2011

6
7 
8 KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

10 houz3076.scm