

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

O.Z. MARTIN,

Plaintiff,

No. CIV S-11-0172 FCD DAD P

vs.

JAMES WALKER et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner 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,
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
18 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 **DISCUSSION**

2 A civil rights action is the proper mechanism for a prisoner seeking to challenge
3 the conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). In contrast,
4 habeas corpus proceedings are the proper mechanism for a prisoner seeking to challenge the fact
5 or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, plaintiff
6 claims that the defendants' conduct resulted in his loss of good-time credits. However, plaintiff
7 has not alleged or even suggested that the disciplinary conviction in question has been overturned
8 or otherwise invalidated.

9 Under these circumstances, the court cannot allow plaintiff to proceed in this civil
10 rights action. Plaintiff's claims against defendants, if established, would necessarily imply the
11 invalidity of his disciplinary conviction for Rules Violation Report Log No. C08-12-028 and the
12 resulting forfeiture of time credits. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) ("a state
13 prisoner's § 1983 action is barred (absent prior invalidation) - no matter the relief sought
14 (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to
15 conviction or internal prison proceedings) - *if* success in that action would necessarily
16 demonstrate the invalidity of confinement or its duration.") (emphasis in original); Heck v.
17 Humphrey, 512 U.S. 477 (1994) (a state prisoner may not recover damages under § 1983 for
18 allegedly unconstitutional imprisonment, or for any other harm caused by "actions whose
19 unlawfulness would render the imprisonment invalid," unless he can prove that the conviction or
20 other basis for confinement has been reversed on direct appeal, expunged by executive order,
21 declared invalid by a state tribunal authorized to make such a determination, or called into
22 question by a federal court's issuance of a writ of habeas corpus). Accordingly, the court will
23 recommend that plaintiff's complaint be dismissed without prejudice to its re-filing should
24 plaintiff have the challenged disciplinary conviction reversed, expunged, declared invalid or set
25 aside by the issuance of a writ of habeas corpus or otherwise.

26 ////

1 **CONCLUSION**

2 IT IS HEREBY RECOMMENDED that:

- 3 1. Plaintiff's motion to proceed in forma pauperis (Doc. No. 2) be denied; and
4 2. This action be dismissed without prejudice.

5 These findings and recommendations are submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
7 days after being served with these findings and recommendations, plaintiff may file written
8 objections with the court. The document should be captioned "Objections to Magistrate Judge's
9 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
10 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
11 F.2d 1153 (9th Cir. 1991).

12 DATED: July 19, 2011.

13 
14 _____
15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

17
18
19
20
21
22
23
24
25
26
DAD:9
mart0172.56