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

TYSON JOIEL SUGGS,

Plaintiff,

No. 2:11-cv-0292-JAM-DAD (PC)

vs.

SHARON M. CAMMISA, etc.,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
4 U.S.C. § 1915(b)(2).

5 The court is required to screen complaints brought by prisoners seeking relief
6 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
8 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
9 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
10 U.S.C. § 1915A(b)(1),(2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
13 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989); Franklin, 745 F.2d at 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
22 (1957)). In order to survive dismissal for failure to state a claim a complaint must contain more
23 than "a formulaic recitation of the elements of a cause of action;" it must contain factual
24 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550
25 U.S. at 555. However, "[s]pecific facts are not necessary; the statement [of facts] need only
26 "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'""

1 Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting Bell, 550 U.S. at 555, in turn quoting
2 Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this standard, the
3 court must accept as true the allegations of the complaint in question, Erickson, *id.*, and construe
4 the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
5 (1974).

6 In his complaint, plaintiff alleges that defendant Sharon M. Cammisa, an attorney
7 in the Sacramento County Public Defender’s Office, wrongfully charged him in 2005 with
8 voluntary manslaughter and the high term of eleven years plus a on year enhancement. He seeks
9 money damages.

10 Court records reflect that in July 2005, plaintiff was convicted in Sacramento
11 County Superior Court on charges of voluntary first degree voluntary manslaughter with use of a
12 deadly weapon and sentenced to eleven years in state prison plus a one year enhancement. See
13 Petition for Writ of Habeas Corpus, filed September 16, 2009, in Case No. 2:09-cv-2592 MCE
14 KJM (HC).¹ Sharon M. Cammisa represented plaintiff in those criminal proceedings in state
15 court. Id.

16 In Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme Court held
17 that a suit for damages on a civil rights claim concerning an allegedly unconstitutional
18 conviction or imprisonment cannot be maintained absent proof “that the conviction or sentence
19 has been reversed on direct appeal, expunged by executive order, declared invalid by a state
20 tribunal authorized to make such determination, or called into question by a federal court's
21 issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck, 512 U.S. at 486.

22 Under Heck, the court is required to determine whether a judgment in plaintiff's
23 favor in this case would necessarily invalidate his conviction or sentence. Id. If it would, the
24 complaint must be dismissed unless the plaintiff can show that the conviction or sentence has

25 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
26 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 been invalidated. Liberally construed², this court finds that plaintiff's action would, if it
2 proceeded, implicate the validity of his criminal conviction, and that plaintiff has not shown that
3 the conviction in question has been invalidated. Accordingly, the action must be dismissed
4 without prejudice. See Heck v. Humphrey, 512 U.S. at 486-87.

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

6 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

7 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

8 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
9 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
10 Director of the California Department of Corrections and Rehabilitation filed concurrently
11 herewith.

12 IT IS HEREBY RECOMMENDED that this action be dismissed without
13 prejudice. See Heck v. Humphrey, 512 U.S. at 486-87.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
16 days after being served with these findings and recommendations, plaintiff may file written
17 objections with the court. The document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendations." Plaintiff is advised that failure to file objections within the

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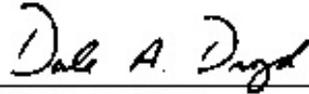
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24 ² As noted above, plaintiff alleges that his public defender "charged" him with
25 involuntary manslaughter. This is, of course, legally impossible. However, there is no
26 possibility that plaintiff could amend his complaint in a manner that would cure the bar to
proceeding with this civil rights action presented by Heck.

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 DATED: April 6, 2011.

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6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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