

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS L. GARDNER,
Plaintiff,
v.
CITY OF VALLEJO, et al.,
Defendants.

No. 2:13-cv-2481 KJN P

ORDER

Plaintiff is a former county jail inmate proceeding without counsel. 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 consented to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c).

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.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 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. 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 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when 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7 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
8 2000) (“a judge may dismiss [in forma pauperis] claims which are based on indisputably
9 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
10 1227.

11 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
12 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
13 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
14 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
15 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
16 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
17 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
18 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
20 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
21 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
22 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
23 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
24 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

25 In his complaint, plaintiff alleges that he was: (1) mistakenly identified as the perpetrator
26 in People v. Gardner, Case No. VCR216764 (Solano County Superior Court), (2) denied the
27 effective assistance of counsel by defective trial performance resulting in a loss of material
28 evidence and an improperly selected jury, (3) denied the ability to withdraw his guilty plea, and

1 (4) subjected to prosecutorial misconduct. Plaintiff provided copies of his preliminary hearing
2 transcript held on January 22, 2013 (ECF No. 1 at 24-46); and portions of the transcript from his
3 jury trial conducted on March 20 and 26, 2013 in the Solano County Superior Court. (ECF Nos.
4 1 at 47-150; 4 at 4-79.) Finally, on January 13, 2014, plaintiff filed a notice of change of address
5 to Deuel Vocational Institution (ECF No. 7), suggesting that plaintiff was convicted of the
6 criminal charges.

7 A petition for habeas corpus is a prisoner's sole judicial remedy when attacking "the
8 validity of the fact or length of . . . confinement." Preiser v. Rodriguez, 411 U.S. 475, 489-90
9 (1973); Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1990). In Heck v. Humphrey, 512 U.S. 477
10 (1994), the Court clarified that such suits may not be brought under § 1983 but must instead be
11 pursued by filing a petition for writ of habeas corpus. Heck, 512 U.S. at 477. There, the court
12 held that a state prisoner may not bring a damages claim under § 1983 attacking the
13 constitutionality of his criminal conviction unless and until the underlying conviction is
14 invalidated through habeas corpus or similar proceeding, because success in the § 1983 damages
15 action would necessarily establish the invalidity of the conviction and attendant confinement.
16 Heck, 512 U.S. at 478, 486-87. The Court emphasized that this rule, sometimes referred to as the
17 "favorable termination rule," applies only where success in the civil rights suit would necessarily
18 imply that the conviction or sentence were invalid. Id. at 486-87 and n.6-7. "Challenges to the
19 validity of any confinement or to particulars affecting its duration are the province of habeas
20 corpus." Hill v. McDonough, 547 U.S. 574, 579 (2006) (quoting Muhammad v. Close, 540 U.S.
21 749, 750 (2004) (per curiam)).

22 Consequently, here, plaintiff may not use a civil rights action to challenge the validity of
23 his incarceration or seek to overturn any criminal conviction. Such relief is only available in a
24 habeas corpus action, and may only be sought after any state court appeals have been resolved,
25 and he has exhausted his state court remedies.¹ Plaintiff may not seek damages for an alleged

26 _____
27 ¹ Plaintiff is cautioned that the habeas corpus statute imposes a one year statute of limitations for
28 filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will
start to run on the date on which the state court judgment became final by the conclusion of direct
review or the expiration of time for seeking direct review, although the statute of limitations is

1 wrongful conviction until such conviction is overturned or invalidated through a petition for writ
2 of habeas corpus.

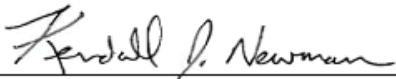
3 In accordance with the above, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's request for leave to proceed in forma pauperis is granted;
- 5 2. Plaintiff's complaint is dismissed without prejudice; and
- 6 3. This action is dismissed without prejudice.

7 Dated: June 9, 2014

8

9 /gard2481.56


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

tolled while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C. § 2244(d).