

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**

BRIAN SPEARS,

No. 2:14-cv-0950-CMK-P

Plaintiff,

vs.

ORDER

ADAM WEINER, et al.,

Defendant.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff's amended complaint (Doc. 21).

Plaintiff's original complaint was dismissed with leave to amended. The original complaint had several defects, only some of which the court found had a reasonable chance of being cured. The court dismissed some of the claims without leave to amend, but upon plaintiff's request for reconsideration, provided Plaintiff an opportunity to file an amended complaint on some of those claims to see if he was able to cure the defects. In addition, Plaintiff's original complaint contained several unrelated claims, which Plaintiff was required to

1 limit in any amended complaint he filed. He has limited the claims, but has failed to cure the
2 defects as discussed below.

3 As plaintiff was previously informed, the court is required to screen complaints
4 brought by prisoners seeking relief against a governmental entity or officer or employee of a
5 governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion
6 thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be
7 granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28
8 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
9 complaints contain a “short and plain statement of the claim showing that the pleader is entitled
10 to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and
11 directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P.
12 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the
13 plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129
14 (9th Cir. 1996). Because plaintiff must allege with at least some degree of particularity overt acts
15 by specific defendants which support the claims, vague and conclusory allegations fail to satisfy
16 this standard. Additionally, it is impossible for the court to conduct the screening required by
17 law when the allegations are vague and conclusory.

18 I. PLAINTIFF’S ALLEGATIONS

19 Plaintiff’s amended complaint contains only those allegations relating to his
20 criminal conviction. He alleges violations of his due process rights, and his First and Eighth
21 Amendment rights. As he did in the original complaint, he claims his defense attorney and the
22 district attorneys who prosecuted his criminal case conspired together to violate his due process
23 rights and have him convicted. He claims defendant Weiner, his court appointed defense
24 attorney, hid and manipulated discovery, intentionally delayed his due process, failed to
25 interview, research, impeach and call witnesses, and failed to put on any defense. He alleges
26 defendant Sudar, a deputy district attorney, abused her position and threatened witnesses.

1 Detective Ken Barber, who was not named in the original complaint, is alleged to be the lead
2 detective investigating Plaintiff, who threatened, intimidated, lied to, and manipulated the witnesses.
3 Finally, plaintiff alleges Theresa Separs conspired and worked in concert with Detective Barber
4 and defendant Sudar to ensure the conviction of Plaintiff, who was motivated by prejudice and
5 personal financial gain.

6 II. DISCUSSION

7 As plaintiff has limited his amended complaint, many of the issues discussed in
8 the court's previous order have been resolved. However, plaintiff fails to resolve the issue as to
9 whether he can state a cognizable claim for violation of his Civil Rights occurring during a
10 criminal prosecution at this time.

11 Plaintiff was previously informed that § 1983 imposes liability upon any person
12 who, acting under color of state law, deprives another of a federally protected right. 42 U.S.C. §
13 1983 (1982). "To make out a cause of action under section 1983, plaintiffs must plead that (1)
14 the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the
15 Constitution or federal statutes." Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir.1986).
16 However, there are limitations.

17 Plaintiff is attempting to challenge the legality of his criminal prosecution by
18 bringing a Civil Rights action against many of the individuals who were involved in those
19 proceedings, including his defense attorney, the deputy district attorney prosecuting that action,
20 the investigating detective, and an individual who appears to be a key prosecuting witness. As he
21 was previously informed, there are defects¹ in raising such claims against each of these

22
23 ¹ A defendant has acted under color of state law where he or she has "exercised
24 power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed
25 with the authority of state law.'" West v. Atkins, 487 U.S. 42, 29 (1988) (quoting United States
26 v. Classic 313 U.S. 299, 326 (1941). Public defenders act as an advocate for their client and are
not acting under color of state law for § 1983 purposes, nor are attorneys appointed by the court
to represent a defendant in place of the public defender. See Georgia v. McCollum, 505 U.S. 42,
53 (1992); Polk County v. Dodson, 454 U.S. 312, 320-25 (1981). Prosecutorial immunity
protects eligible government officials when they are acting pursuant to their official role as

1 individuals. However, as he is generally challenging his conviction, such a claim is not
2 cognizable in § 1983 unless the underlying conviction or sentence has first been invalidated on
3 appeal, by habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512
4 U.S. 477, 483-84 (1994) (concluding that § 1983 claim not cognizable because allegations were
5 akin to malicious prosecution action which includes as an element a finding that the criminal
6 proceeding was concluded in plaintiff's favor).

7 When a state prisoner challenges the legality of his custody and the relief he seeks
8 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
9 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
10 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
11 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
12 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
13 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
14 underlying conviction or sentence, such a claim is not cognizable under § 1983 unless the
15 conviction or sentence has first been invalidated on appeal, by habeas petition, or through some
16 similar proceeding. See Heck, 512 U.S. at 483-84; Butterfield v. Bail, 120 F.3d 1023, 1024-25
17 (9th Cir. 1997) (concluding that § 1983 claim not cognizable because allegations of procedural
18 defects were an attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at
19 824 (concluding that § 1983 claim was cognizable because challenge was to conditions for parole
20 eligibility and not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74
21 (2005) (concluding that § 1983 action seeking changes in procedures for determining when an
22 inmate is eligible for parole consideration not barred because changed procedures would hasten

23 _____
24 advocate for the state. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976). This immunity
25 extends to actions during both the pre-trial and post-trial phases of a case. See Demery v.
26 Kupperman, 735 F.2d 1139, 1144 (9th Cir. 1984). State prosecutors are entitled to absolute
prosecutorial immunity for acts taken in their official capacity. See Kalina v. Fletcher, 522 U.S.
118, 123-25 (1997). Thus, it does not appear as though this action could be maintained against
the individuals plaintiff has named as defendants to this action.

1 action should not be dismissed for failure to state a claim. Plaintiff is warned that failure to
2 respond to this order may result in dismissal of the action for the reasons outlined above, as well
3 as for failure to prosecute and comply with court rules and orders. See Local Rule 110.

4 IT IS SO ORDERED.

5
6 DATED: September 22, 2017

7 
8 **CRAIG M. KELLISON**
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26