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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN VINCENT FORD,
Plaintiff,
v.
ANDREA BRYAN, et al.
Defendants.

No. 2:15-cv-2635 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. He has consented to have all matters before a United States Magistrate Judge. See 28 U.S.C. § 636(b)(1). On March 3, 2016, plaintiff’s complaint was dismissed with leave to amend. Plaintiff has now filed an amended complaint.

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).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
3 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
4 Cir. 1989); Franklin, 745 F.2d at 1227.

5 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
6 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
7 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
8 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
9 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
10 this standard, the court must accept as true the allegations of the complaint in question, Hospital
11 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
12 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
13 McKeithen, 395 U.S. 411, 421 (1969).

14 As in his original complaint, the allegations in plaintiff's amended complaint concern the
15 criminal proceedings which resulted in plaintiff being incarcerated. Plaintiff does not clarify the
16 relief he seeks.

17 As plaintiff was informed in the court's March 3, 2016 order dismissing plaintiff's
18 original complaint with leave to amend, to the extent he seeks release, his sole federal remedy is a
19 writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). To the extent he seeks
20 damages, his claims are barred by the Supreme Court's decision in Heck v. Humphrey, 512 U.S.
21 477, 487 (1994). In any case, plaintiff fails to state a claim upon which relief can be granted in a
22 42 U.S.C. § 1983 action.

23 For these reasons, plaintiff's amended complaint will be dismissed. Because granting
24 leave to amend a second time appears futile, leave will not be granted.

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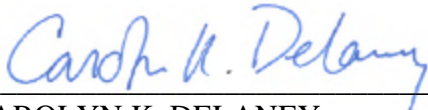
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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's amended complaint is dismissed; and
2. This case is closed.

Dated: April 28, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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