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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAHEED SCOTT, SR.,
Plaintiff,
v.
ROBERT W. FOX, et al.,
Defendants.¹

No. 2:16-cv-1927 KJN P

ORDER

Plaintiff is a former state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and paid the court’s filing fee. 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).

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

¹ Although plaintiff listed the California Department of Corrections and Rehabilitation and the California Medical Facility as defendants in the caption of his pleading, plaintiff did not include them as named defendants in his pleading. Moreover, the Eleventh Amendment bars suits brought by private parties against a state or state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). The Clerk of the Court is directed to remove their names from the list of defendants on the court’s docket.

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
5 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
8 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
9 Cir. 1989); Franklin, 745 F.2d at 1227.

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

19 Plaintiff’s complaint seeks damages for allegedly illegal confinement which resulted from
20 a delay in his release to parole. He claims that this delay violates his right to due process, equal
21 protection, and constitutes cruel and unusual punishment. A complaint must be dismissed for
22 failure to state a claim if “judgment in favor of the plaintiff would necessarily imply the invalidity
23 of his conviction or sentence . . . unless the plaintiff can demonstrate that the conviction or
24 sentence has already been invalidated.” Heck v. Humphrey, 512 U.S. 477, 487 (1994). “[A]
25 challenge to the procedures used in the denial of parole necessarily implicates the validity of the
26 denial of parole and, therefore, the prisoner’s continuing confinement.” Butterfield v. Bail, 120
27 F.3d 1023, 1024 (9th Cir. 1997). While plaintiff has not been denied parole, he alleges that his
28 release on parole was delayed. See Scott v. Ulrich, 370 Fed. App’x 970, 970-71 (10th Cir. 2010)

1 (“[t]he rule in Heck . . . applies to ‘proceedings that call into question the fact or duration of
2 parole or probation. . .’”, and the district court concluded that -- absent any indication that the
3 decision to delay Mr. Scott’s release on parole had been invalidated -- he could “not recover
4 damages for the claims he [raised] . . . because those claims challenge the validity of the decision
5 to delay his release on parole.”)

6 Plaintiff’s success on his claim in this court necessarily would imply the invalidity of his
7 extended confinement. Thus, unless he can show that the remedy of habeas corpus is unavailable
8 through no fault of his own, this action must be dismissed. See Cunningham v. Gates, 312 F.3d
9 1148, 1153 n.3 (9th Cir. 2002) (Heck bar applies where plaintiff could have sought habeas relief
10 but did not). To proceed on this claim, plaintiff must demonstrate that this extended confinement
11 already has been invalidated or that habeas procedures are unavailable to him through no fault of
12 his own.

13 Therefore, to proceed plaintiff must file an amended complaint. Any amended complaint
14 must show that the federal court has jurisdiction and that plaintiff’s action is brought in the right
15 place, and that plaintiff is entitled to relief if plaintiff’s allegations are true. Plaintiff must
16 identify as a defendant only persons who personally participated in a substantial way in depriving
17 plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a
18 person subjects another to the deprivation of a constitutional right if he does an act, participates in
19 another’s act or omits to perform an act he is legally required to do that causes the alleged
20 deprivation). For example, prisoners have no Fourteenth Amendment liberty interest in a right to
21 appeal adverse decisions by prison authorities. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
22 1988) (“There is no legitimate claim of entitlement to a grievance procedure.”). In Ramirez v.
23 Galaza, 334 F.3d 850, 860 (9th Cir. 2003), the Ninth Circuit confirmed that a prisoner may not
24 challenge an administrative disciplinary appeals process on Due Process grounds, confirming that
25 “inmates lack a constitutional entitlement to a specific prison grievance procedure.” Id. Thus,
26 plaintiff cannot state cognizable due process claims against defendants Artis and Briggs based on
27 their role in addressing plaintiff’s administrative appeals.

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1 Moreover, plaintiff may not file a petition for writ of habeas corpus in this action to
2 convert it to an action under 28 U.S.C. § 2254, unless he has first exhausted his state court
3 remedies. The exhaustion of state court remedies is a prerequisite to the granting of a petition for
4 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived
5 explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).² A waiver of exhaustion, thus, may
6 not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the
7 highest state court with a full and fair opportunity to consider all claims before presenting them to
8 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
9 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).³

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
11 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
12 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
13 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
14 is some affirmative link or connection between a defendant's actions and the claimed deprivation.
15 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980).
16 Furthermore, vague and conclusory allegations of official participation in civil rights violations
17 are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
19 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. This requirement is
21 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
22 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original

23 ² A habeas petition may be denied on the merits without exhaustion of state court remedies. 28
24 U.S.C. § 2254(b)(2).

25 ³ Plaintiff is cautioned that the habeas corpus statute imposes a one year statute of limitations for
26 filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will
27 start to run on the date on which the state court judgment became final by the conclusion of direct
28 review or the expiration of time for seeking direct review, although the statute of limitations is
tollled while a properly filed application for state post-conviction or other collateral review is
pending. 28 U.S.C. § 2244(d).

1 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
2 original complaint, each claim and the involvement of each defendant must be sufficiently
3 alleged.

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

5 1. The Clerk of the Court is directed to remove the California Department of Corrections
6 and Rehabilitation and the California Medical Facility set forth as defendants on the court's
7 docket.

8 2. Plaintiff's complaint is dismissed.

9 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
10 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
11 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
12 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
13 two copies of the amended complaint; failure to file an amended complaint in accordance with
14 this order will result in a recommendation that this action be dismissed.

15 4. The Clerk of the Court is directed to send plaintiff the forms for filing a civil rights
16 complaint by a prisoner, and a petition for writ of habeas corpus.

17 Dated: September 9, 2016

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE