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

TODD CHRISTIAN ROBBEN,
Plaintiff,
v.
EL DORADO COUNTY, et al.,
Defendants.

No. 2:16-CV-2698-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff names the following as defendants: (1) Vern Pierson, the District
9 Attorney for El Dorado County; (2) Dale Gomes; (3) Mike Pizzuti; and (4) the El Dorado County
10 District Attorney's Office. Plaintiff claims defendant Pierson abused his office to carry out a
11 personal vendetta by using false evidence and testimony to initiate two criminal cases against
12 him. See Doc. 1, p. 3 (plaintiff's complaint). According to plaintiff, he has filed "an appeal and
13 petition for habeas corpus to reverse the convictions." Id. Plaintiff does not state the outcomes of
14 those cases.

15 16 **II. DISCUSSION**

17 When a state prisoner challenges the legality of his custody and the relief he seeks
18 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
19 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
20 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
21 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
22 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
23 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
24 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
25 imposition of a sanction affecting the overall length of confinement, such a claim is not
26 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by
27 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-
28 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to

1 malicious prosecution action which includes as an element a finding that the criminal proceeding
2 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)
3 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an
4 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding
5 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and
6 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)
7 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is
8 eligible for parole consideration not barred because changed procedures would hasten future
9 parole consideration and not affect any earlier parole determination under the prior procedures).

10 To the extent plaintiff alleges misconduct on the part of defendants that resulted in
11 criminal convictions, success on the merits of the instant civil rights action would necessarily
12 imply the invalidity of one or both of those convictions. While plaintiff states that he has filed an
13 appeal and habeas corpus action concerning the convictions, he does not state in the complaint
14 that the convictions were set aside or otherwise invalidated such that this action can proceed.

15 On November 2, 2018, the court advised plaintiff of the foregoing and provided
16 plaintiff an opportunity to file an amended complaint "to allege additional facts relating to the
17 appeal and habeas action." See Doc. 21 (November 2, 2018, order). Plaintiff was provided 30
18 days in which to file an amended complaint and cautioned that failure to do so could result in
19 dismissal of the entire action. In response to the court's order, plaintiff filed a document entitled
20 "Plaintiff's Motion to Stay Motion for Order to Produce Records" (Doc. 22). Plaintiff did not file
21 an amended complaint. In his filing, plaintiff states that he has two habeas corpus action pending
22 in this court, neither of which has resulted in an invalidation of his criminal sentence.

23 Specifically, plaintiff states he is ". . . currently waiting for his appeal or habeas to prevail to
24 vacate the conviction." Because plaintiff's criminal conviction has not been set aside, and
25 because success on the merits of plaintiff's current civil rights claims would necessarily imply the
26 invalidity of the criminal sentence, the current action must be dismissed as Heck-barred.

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1 **III. CONCLUSION**

2 Because it does not appear possible that the deficiencies identified herein can be
3 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
4 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Based on the foregoing, the undersigned recommends that this action be dismissed
6 without leave to amend for failure to state a cognizable claim and that all pending motions be
7 denied as moot.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court. Responses to objections shall be filed within 14 days after service of
12 objections. Failure to file objections within the specified time may waive the right to appeal. See
13 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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16 Dated: December 6, 2018



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18 DENNIS M. COTA
19 UNITED STATES MAGISTRATE JUDGE
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