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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE ROBERTSON,
Plaintiff,
v.
WILLOWS POLICE DEPARTMENT,
et al.,
Defendants.

No. 2:17-cv-0352 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983, together with a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has consented to the jurisdiction of the undersigned United States Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a). See ECF No. 13.

Plaintiff has demonstrated entitlement to proceed in forma pauperis status under 28 U.S.C. § 1915(a). See ECF Nos. 6, 12. However, because this action will be dismissed, no fee will be imposed.

This 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 the prisoner has raised claims that are legally “frivolous or malicious,” fail to state a claim upon which relief may be granted, or seek

1 monetary relief from an immune defendant. See 28 U.S.C. § 1915A(b)(1), (2). A pro se litigant
2 is entitled to notice of the deficiencies in his complaint and an opportunity to amend, if it appears
3 that the deficiencies can be cured by amendment. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th
4 Cir. 1987).

5 Review of the instant complaint demonstrates that it fails to state a claim upon which
6 relief may be granted, and that the deficiencies of the complaint cannot be cured by amendment.

7 Plaintiff's six-page complaint is set forth on a form used by the United States District
8 Court for the Northern District of California. The complaint was originally filed in that district on
9 November 20, 2016, and transferred to this court on February 15, 2017. Plaintiff was then
10 incarcerated at California State Prison Solano (CSP-SOL), where he remains.

11 The complaint names four defendants: (1) Willows Police Officer Michael Stover, (2)
12 plaintiff's trial counsel, Colusa attorney Albert Smith, (3) Glenn County Superior Court Judge
13 Donald Cole Byrd, and (4) Glenn County Assistant District Attorney Ruby Neumann. Plaintiff
14 alleges that Officer Stover "falsified statements & tampered with evidence" relative to his "illegal
15 search & seizure" in violation of plaintiff's Fourth Amendment rights; that both attorneys and the
16 judge "took part in this malicious prosecution" against plaintiff; that defense counsel Smith polled
17 only 49 potential jurors, allowed protected statements to be admitted at trial in violation of
18 plaintiff's rights under Miranda v Arizona, 384 U.S. 436 (1966), and failed to introduce
19 exculpatory evidence, thus providing ineffective assistance of counsel under Strickland v.
20 Washington, 466 U.S. 668 (1984); and that Judge Byrd "allowed tampered evidence in the
21 courtroom," and improperly denied plaintiff's good cause hearing. The relief sought by the
22 complaint is "Vacate sentence. Award 1,000,000 dollars in damages." ECF No. 1 at 3. Plaintiff
23 avers that he did not administratively exhaust his claims because this cases "deal[s] with my
24 conviction." ECF No. 1 at 2.

25 Plaintiff is informed that federal courts offer two main avenues for challenging one's state
26 imprisonment – a civil rights complaint pursuant to 42 U.S.C. § 1983, and a petition for habeas
27 corpus pursuant to 28 U.S.C. § 2254. Challenges to the conditions of one's confinement are
28 brought in a civil rights action, while challenges to the validity or duration of one's confinement

1 (conviction and/or sentence) are brought in a habeas action. There are important conditions
2 precedent to both types of actions – a civil rights action may be brought only after plaintiff has
3 exhausted his prison administrative remedies, while a habeas action may be brought only after
4 petitioner has exhausted his claims in the state courts. Although money damages may be
5 obtained pursuant to a successful civil rights action, they may not be obtained in a habeas action.

6 Plaintiff does not challenge the conditions of his confinement, and concedes that he has
7 not exhausted any administrative remedies. Therefore, this action cannot proceed under 42
8 U.S.C. § 1983. Moreover, two of the named defendants are immune from suit.¹

9 Nor can plaintiff obtain the relief he seeks under 28 U.S.C. § 2254. Review of California
10 appellate court dockets² indicates that plaintiff filed a notice of appeal from his conviction on
11 November 10, 2015. However, the appeal has not yet been decided and was not fully briefed
12 until March 29, 2017. See California Court of Appeal, Third District, Case No. C080705 (People
13 v. Roberson). There is no indication that plaintiff has sought review or habeas corpus from the
14 California Supreme Court. Because plaintiff has not exhausted potential habeas claims in the
15 state courts, this court would be unable to grant relief in a habeas proceeding. See 28 U.S.C. §
16 2254(b)(1)(A).

17 For these several reasons, the court finds that plaintiff's pleading cannot be cured by
18 amendment, and that this action must be dismissed. Accordingly, IT IS HEREBY ORDERED
19 that:

- 20 1. Plaintiff's request to proceed in forma pauperis is granted; however, no fee is imposed.
- 21 2. This action is dismissed without prejudice for failure to state a cognizable claim, and
22 because this deficiency cannot be cured by amendment.

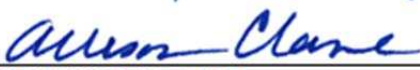
23 ¹ District attorneys are absolutely immune from civil suits for damages under Section 1983 which
24 challenge activities related to the initiation and presentation of criminal prosecutions. See Imbler
25 v. Pachtman, 424 U.S. 409, 430-31 (1976). Similarly, judges acting within the course and scope
26 of their judicial duties are absolutely immune from liability for damages under Section 1983. See
27 Pierson v. Ray, 386 U.S. 547 (1967); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978).

28 ² This court may take judicial notice of its own records and the records of other courts. See
United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631
F.2d 118, 119 (9th Cir. 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts
that are capable of accurate determination by sources whose accuracy cannot reasonably be
questioned).

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3. The Clerk of Court is directed to close this case.

DATED: April 14, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE