

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**

DENNIS GARDNER,

No. 2:17-CV-0925-GEB-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

THOMAS BARRETT, et al.,

Defendants.

_____ /

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

1 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
2 allege with at least some degree of particularity overt acts by specific defendants which support
3 the 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 Plaintiff names the following as defendants: (1) Thomas Barrett; (2) Tim Kam;
7 (3) Steve Darden; and (4) the Vallejo Police Department. Plaintiff alleges that defendants
8 violated his constitutional rights from his arrest through trial on the conviction underlying his
9 current incarceration. Specifically, he claims that Vallejo Police Department officer Coleman
10 arrested him based on a flawed witness identification. He claims that his court-appointed
11 attorney, defendant Barrett, was ineffective. Plaintiff alleges that the trial judge, defendant Kam,
12 was biased. He alleges that his accuser, defendant Darden, admitted that he did not know the
13 description of the suspect.

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

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

9 Here, plaintiff's claims are not cognizable under § 1983 because each implies the
10 invalidity of his underlying conviction. Because it does not appear possible that the deficiencies
11 identified herein can be cured by amending the complaint, plaintiff is not entitled to leave to
12 amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131
13 (9th Cir. 2000) (en banc).

14 Based on the foregoing, the undersigned recommends that this action be dismissed
15 for failure to state a claim.

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

22
23 DATED: June 22, 2017

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE