

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
27
28

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

ANTHONY DEWAYNE LEE TURNER,
Plaintiff,
v.
KENNETH LLOYD ROSENFELD, et al.,
Defendants.

No. 2:18-CV-2796-TLN-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) Kenneth Lloyd Rosenfeld,
9 plaintiff's criminal defense attorney; and (2) the Sacramento County Superior Court. Plaintiff
10 claims defendant Rosenfeld "acted as Judge, DA, attorney, Jury, and Convictioner" in his
11 criminal case over 30 years ago. Doc. 1, p. 3. According to plaintiff, defendant Rosenfeld "kept
12 pushing the court that I was guilty" despite his innocence. Id.

13 14 **II. DISCUSSION**

15 When a state prisoner challenges the legality of his custody and the relief he seeks
16 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
17 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
18 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
19 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
20 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
21 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
22 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
23 imposition of a sanction affecting the overall length of confinement, such a claim is not
24 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by
25 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-
26 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
27 malicious prosecution action which includes as an element a finding that the criminal proceeding
28 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)

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

8 In this case, success on the merits of plaintiff's claim against defendant Rosenfeld
9 would necessarily imply the invalidity of his underlying criminal conviction because it would
10 mean plaintiff received ineffective assistance of counsel, and plaintiff has not alleged the
11 underlying criminal conviction has been invalidated or otherwise set aside. Plaintiff's claim is,
12 therefore, not cognizable under § 1983.

13 14 III. CONCLUSION

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

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

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

26 Dated: November 2, 2018



27 DENNIS M. COTA
28 UNITED STATES MAGISTRATE JUDGE