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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEODORE CHURCHILL SHOVE, SR.,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

No. 2:24-cv-01741-EFB (PC)
ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has filed an application to proceed in forma pauperis. ECF Nos. 2, 6.

I. Request to Proceed In Forma Pauperis

Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

II. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
4 relief.” *Id.* § 1915A(b).

5 This standard is echoed in 28 U.S.C. § 1915(e)(2), which requires that courts dismiss a
6 case in which a plaintiff proceeds in forma pauperis at any time if it determines, among other
7 things, that the action “is frivolous or malicious,” “fails to state a claim on which relief may be
8 granted,” or “seeks monetary relief against a defendant who is immune from such relief.” “[The]
9 term ‘frivolous,’ when applied to a complaint, embraces not only the inarguable legal conclusion,
10 but also the fanciful factual allegation.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)
11 (discussing the predecessor to modern § 1915(e)(2), former § 1915(d)). Thus, § 1915(e)(2)
12 allows judges to dismiss a claim based on factual allegations that are clearly baseless, such as
13 facts describing “fantastic or delusional scenarios.” *Id.* at 327-38.

14 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
15 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
16 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
17 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
18 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
19 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
20 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
21 U.S. 662, 679 (2009).

22 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
23 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
24 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
25 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
26 678.

27 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
28 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual

1 content that allows the court to draw the reasonable inference that the defendant is liable for the
2 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
3 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
4 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
5 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

6 **III. Screening Order**

7 Plaintiff challenges various aspects of the criminal investigation, arrest, trial, and post-trial
8 proceedings related to his murder convictions and death sentence. ECF No. 1. Because success
9 on plaintiff’s claims would invalidate his conviction (plaintiff expressly seeks his release and
10 expungement of his conviction, *id.* at 36-37), plaintiff must show that his conviction has been
11 invalidated (for example, through the granting of a petition for writ of habeas corpus) before he
12 can proceed with a § 1983 claim. *Hebrard v. Nofziger*, 90 F.4th 1000, 1007-08 (9th Cir. 2024);
13 *Shove v. Schwarzenegger*, No. C 09-0656 RMW (PR), 2009 U.S. Dist. LEXIS 132505, at *6
14 (N.D. Cal. June 3, 2009). Plaintiff has not so alleged, and thus his claims must be dismissed
15 without prejudice; plaintiff may raise these issues in a petition for writ of habeas corpus (if such a
16 petition is not otherwise barred). The court takes judicial notice of the California Department of
17 Corrections and Rehabilitation inmate locator, which states that petitioner remains condemned on
18 the convictions he challenges herein. CDCR Inmate Locator,
19 <https://ciris.mt.cdc.ca.gov/details?cdcNumber=G11092>, last checked Nov. 17, 2024. As
20 amendment of the instant complaint would therefore be futile – plaintiff cannot show that his
21 convictions have been invalidated as he is currently incarcerated under those convictions – the
22 court should dismiss the complaint without leave to amend.

23 **IV. Order and Recommendation**

24 Accordingly, it is ORDERED that:

- 25 1. Plaintiff’s request to proceed in forma pauperis (ECF Nos. 2, 6) is granted.
- 26 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
27 in accordance with the notice to the California Department of Corrections and
28 Rehabilitation filed concurrently herewith.

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3. The Clerk of Court randomly assign a district judge to this action.

It is further RECOMMENDED that the complaint be dismissed without prejudice and without leave to amend and the Clerk of Court directed to close the case and administratively terminate all pending motions.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 23, 2025


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE