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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 TYRONE LAMONT REED,

9 Plaintiff,

No. C 08-5612 TEH (PR)

10 v.

ORDER OF DISMISSAL
AND INSTRUCTIONS TO
THE CLERK

11 JUDGE THOMAS, ALAMEDA
12 COUNTY SUPERIOR COURT,

(Docket no. 2)

13 Defendant.
14 _____/

15 Plaintiff, a prisoner currently incarcerated at the Oakland North County
16 Jail in Oakland, California, has filed a pro se civil rights complaint for damages
17 under 42 U.S.C. § 1983 alleging various violations of his rights by the presiding
18 judge during his prosecution on sexual assault charges in 2007. His complaint is
19 now before the Court for review pursuant to 28 U.S.C. § 1915A.

20 **DISCUSSION**

21 A. Standard of Review

22 Federal courts must engage in a preliminary screening of cases in which
23 prisoners seek redress from a governmental entity or officer or employee of a
24 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable
25 claims or dismiss the complaint, or any portion of the complaint, if the complaint
26 “is frivolous, malicious, or fails to state a claim upon which relief may be
27 granted,” or “seeks monetary relief from a defendant who is immune from such
28 relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed, however.

1 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
3 essential elements: (1) that a right secured by the Constitution or laws of the
4 United States was violated, and (2) that the alleged violation was committed by a
5 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48
6 (1988).

7 B. Legal Claims

8 Plaintiff alleges that Judge Thomas of Alameda County Superior Court
9 violated his rights during his prosecution on rape charges during 2007. He
10 complains that certain charges against him which had been dismissed were read
11 to the jury during trial, that the judge failed to allow him to “fire” his defense
12 attorney despite multiple requests, that Plaintiff was convicted of charges for
13 which the judge had previously found there was insufficient evidence to hold him
14 over for trial and that certain jurors were dismissed during his trial when he was
15 not present.

16 A state judge is absolutely immune from civil liability for damages for
17 acts performed in his judicial capacity. See Pierson v. Ray, 386 U.S. 547, 553-55
18 (1967) (applying judicial immunity to actions under 42 U.S.C. § 1983). Judicial
19 immunity is an immunity from suit for damages, not just from an ultimate
20 assessment of damages. See Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

21 Whether an act by a judge is a judicial one relates to (1) the nature and function
22 of the act and not the act itself, i.e., whether it is a function normally performed
23 by a judge, and to (2) the expectations of the parties, i.e., whether they dealt with
24 the judge in his judicial capacity. Stump v. Sparkman, 435 U.S. 349, 362 (1978);
25 see, e.g., Mireles v. Waco, 502 U.S. 9, 11-13 (1991) (judge's direction to court
26 officers to forcibly bring person before him is function normally performed by
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1 judge and taken in aid of judge's jurisdiction over matter before him); Simmons
2 v. Sacramento County Superior Court, 318 F.3d 1156, 1161 (9th Cir. 2003)
3 (judge absolutely immune for entering default judgment against prisoner who
4 was not permitted to attend civil trial because entry of default judgment in a
5 pending civil case is unquestionably a judicial act); Atkinson-Baker & Assocs.,
6 Inc. v. Kolts, 7 F.3d 1452 (9th Cir. 1993) (judge absolutely immune for decision
7 to bar court reporter from continuing to provide services in case over which judge
8 served as special master since said decision was judicial act). Other factors in
9 determining whether a particular act is judicial include whether: (1) the events
10 occurred in the judge's chambers, (2) the controversy centered around a case then
11 pending before the judge, and (3) whether the events arose directly and
12 immediately out of a confrontation with the judge in his or her official capacity.
13 Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001). Ruling on a
14 motion and exercising control over a courtroom are normal judicial functions. Id.
15 (judge who denied disability accommodation to litigant was absolutely immune).

16 “A judge will not be deprived of immunity because the action he took was
17 in error, was done maliciously, or in excess of his authority; rather, he will be
18 subject to liability only when he has acted in the ‘clear absence of all
19 jurisdiction.’” Stump v. Sparkman, 435 U.S. at 356-57 (citing Bradley v. Fisher,
20 80 U.S. (13 Wall.) 335, 351 (1872)); see also Mireles, 502 U.S. at 11 (judicial
21 immunity is not overcome by allegations of bad faith or malice); Sadorski v.
22 Mosley, 435 F.3d 1076, 1079 n.2 (9th Cir. 2006) (mistake alone is not sufficient
23 to deprive a judge of absolute immunity).

24 The complaint alleges claims against the state trial judge for conduct
25 performed in the course of Plaintiff's trial, for which she is entitled to the
26 protections of absolute immunity. Pierson, 386 U.S. at 553-55 Therefore, the
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1 complaint presents no cognizable claim against Judge Thomas. Accordingly, this
2 action is DISMISSED without prejudice.

3 **CONCLUSION**

4 For the foregoing reasons, the complaint is DISMISSED for failure to
5 state a claim. The motion to proceed in forma pauperis is GRANTED in a
6 separate order filed simultaneously (docket no. 2). The Clerk shall enter
7 judgment accordingly and close the file.

8 Plaintiff's request for assistance in filing a writ of habeas corpus, if
9 immediate release is not available through this action, is GRANTED. The Clerk
10 of Court shall provide Plaintiff with a copy of the Court's form petition for a writ
11 of habeas corpus with this order.

12 SO ORDERED.

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14 DATED: 12/23/08

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17 THELTON E. HENDERSON
18 United States District Judge
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