

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7
8

9 LAMONTE E. WILSON,

No. C 10-0073 SI (pr)

10 Plaintiff,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

11 v.

12 MARGARITA PEREZ; et al.,

13 Defendants.
14 _____/

15 **INTRODUCTION**

16 Lamonte E. Wilson, an inmate at the Correctional Training Facility in Soledad, filed this
17 pro se civil rights action under 42 U.S.C. § 1983. His complaint is now before the court for
18 review under 28 U.S.C. § 1915A.
19

20 **BACKGROUND**

21 According to the complaint, Wilson was sentenced in 1991 to 25 years to life in prison
22 upon his conviction for first degree murder. He had his initial parole hearing on November 15,
23 2005. He "was indistinctly told" that his "eligible parole date" was May 17, 2006, and that
24 "barring any disparage he 'had good chances for parole.'" Complaint, p. 6. On October 26,
25 2009, he attended his second BPH suitability hearing. At this hearing, he "did not normally have
26 his parole release date fixed or calculated," and defendant BPH commissioner Prizmich
27 "rendered his verdict redundantly and repeatedly reconvicting plaintiff for the same crime he was
28 convicted of almost 2 decades prior." Id.

1 to state a claim upon which relief may be granted. An amended complaint is necessary. The
2 court will discuss several areas where there are legal deficiencies and then will provide guidance
3 for the preparation of the amended complaint.

4
5 A. The Legal Deficiencies

6 First, plaintiff contends that parole authorities have improperly failed to apply California
7 Penal Code § 3041(a) to him. He misunderstands California law. A BPH panel meets with an
8 inmate one year before the prisoner's minimum eligible release date "and shall normally set a
9 parole release date. . . . The release date shall be set in a manner that will provide uniform terms
10 for offenses of similar gravity and magnitude in respect to their threat to the public, and that will
11 comply with the sentencing rules that the Judicial Council may issue and any sentencing
12 information relevant to the setting of parole release dates." Cal. Penal Code § 3041(a).
13 Significantly, that statute also provides that the panel "shall set a release date unless it
14 determines that the gravity of the current convicted offense or offenses, or the timing and gravity
15 of current or past convicted offense or offenses, is such that consideration of the public safety
16 requires a more lengthy period of incarceration for this individual, and that a parole date,
17 therefore, cannot be fixed at this meeting." Cal. Penal Code § 3041(b). The statutory scheme
18 places individual suitability for parole above a prisoner's expectancy in early setting of a fixed
19 date designed to ensure term uniformity. In re Dannenberg, 34 Cal. 4th 1061, 1070-71 (Cal.
20 2005). Under state law, therefore, subsection (a) is not reached until after subsection (b). See
21 id. at 1070-71. Wilson's complaint indicates that he was found not suitable for parole. Without
22 a determination that the inmate is suitable for parole under § 3041(b), there is no reason for the
23 BPH to reach § 3041(a) and determine that inmate's term and set a release date. The claim that
24 the BPH improperly has failed to apply § 3041(a) to his case is DISMISSED.¹

25
26
27 ¹His complaint also mentions California Penal Code § 2933. That section pertains to the
28 calculation of time credits. See Complaint, p. 5. It is unclear but it appears that Wilson might be
contending that he is entitled to have his term set with the time credits applied to it. If so, that claim
falls for the same reason as his argument about Penal Code § 3041(a). That is, since a term does not
need to be set, the time credit calculation part of that term-setting does not need to be performed.

1 Second, Wilson appears to claim that he was entitled to be released on May 17, 2006.
2 That, according to his allegations, was his minimum eligible parole date. The minimum eligible
3 parole date is the very least amount of time the inmate can expect to be in prison; release from
4 custody is not legally required on that date. A life inmate is not entitled to release unless he is
5 found suitable for parole, see Cal. Penal Code § 3041(b). Wilson had no right to release on the
6 minimum eligible parole date because he had not been found suitable for parole. The claim is
7 DISMISSED.

8 Third, Wilson claims that the defendants violated his right to be free from double
9 jeopardy by punishing him for the same crime without due process. A denial of parole is not
10 punishment for double jeopardy purposes. See Alessi v. Quinlan, 711 F.2d 497, 501 (2d Cir.
11 1983) (denial of parole "is neither the imposition nor the increase of a sentence, and it is not
12 punishment for purposes of the Double Jeopardy Clause"). Wilson's sentence on his first degree
13 murder conviction was 25-to-life. The BPH has not increased the punishment beyond that set
14 when he was sentenced in 1991. Therefore, the BPH's decision did not violate the Double
15 Jeopardy Clause. The claim is DISMISSED.

16 Fourth, Wilson claims that the denial of parole amounts to cruel and unusual punishment
17 This claim is DISMISSED. Any amount of years he must spend in prison on his life sentence
18 for a murder does not amount to cruel and unusual punishment. See generally Graham v.
19 Florida, 130 S. Ct. 2011, 2021 (2010) (8th Amendment prohibits barbaric punishments but most
20 of the Court's precedents "consider punishments challenged not as inherently barbaric but as
21 disproportionate to the crime. The concept of proportionality is central to the Eighth
22 Amendment."); Harris v. Wright, 93 F.3d 581, 584 (9th Cir. 1996) (sentence of life without
23 parole for 15-year-old murderer does not raise inference of gross disproportionality). The failure
24 to release Wilson on parole – so that he will serve less than life in prison – does not violate the
25 Eighth Amendment.

26 Fifth, there is a problem with the defendants. Insofar as Wilson is attempting to sue the
27 individual BPH commissioners for their acts in conducting his parole hearings, those claims are
28 DISMISSED. The state parole board officials have absolute quasi-judicial immunity when they

1 act to grant, deny or revoke parole, because such actions are functionally comparable to those
2 of judges. Sellars v. Proconier, 641 F.2d 1295, 1302-04 (9th Cir. 1981); Anderson v. Boyd, 714
3 F.2d 906, 908-09 (9th Cir. 1983). If he wishes to sue them for some acts other than their
4 activities conducting the parole hearings for him, he should include such allegations in his
5 amended complaint.

6 Sixth, insofar as Wilson is attempting to sue the Governor for his decisions not to
7 overturn the BPH's decisions to find Wilson not suitable for parole, those claims are
8 DISMISSED. The Governor's review of parole decisions regarding prisoners convicted of
9 murder pursuant to his authority under Article V, § 8(b) of the California Constitution and
10 California Penal Code § 3041.2 is functionally comparable to the role of a judge and,
11 accordingly, he is entitled to absolute quasi-judicial immunity for that review. Miller v. Davis,
12 521 F.3d 1142, 1147 (9th Cir. 2008). It does not matter that he may have acted in excess of his
13 authority, as long as he did not act in the clear absence of all jurisdiction. Id. at 3432. If Wilson
14 wishes to sue the Governor for something other than his decision not to reverse the BPH, he
15 should include such allegations in his amended complaint.

16 Seventh, he suggests that California's Proposition 9 was improperly retroactively applied
17 to him. See Complaint, p. 11. In his amended complaint, he must allege facts showing what
18 happened to him that was a result of the enactment of the law covered by Proposition 9. For
19 example, if he claims that the next parole hearing will be held at a later date, he needs to identify
20 the number of years before that hearing is set to occur. He also needs to explain what relief he
21 is seeking for the alleged ex post facto violation that occurred as the result of the application of
22 Proposition 9 to him.

23 / / /

24 / / /

25

26

27

28

1 B. The Amended Complaint

2 In his amended complaint, Wilson must use great care to state his claims more clearly.
3 The court cannot grant relief – or order service on the defendants – if it does not understand what
4 the plaintiff is claiming. Plaintiff should explain what each defendant did or failed to do that
5 violated his constitutional right(s) and state when each event occurred. He should refer to each
6 defendant by name, and not as a group, e.g., "the defendants."

7 Plaintiff is cautioned that there is no respondeat superior liability under section 1983, i.e.
8 no liability under the theory that one is responsible for the actions or omissions of an employee.
9 Liability under section 1983 arises only upon a showing of personal participation by the
10 defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

11 Plaintiff has included Doe defendants in this action. It is permissible to use Doe
12 defendant designations in a complaint to refer to defendants whose names are unknown to
13 plaintiff. Although the use of Doe defendants is acceptable to withstand dismissal of a complaint
14 at the initial review stage, using Doe defendants creates its own problem: those persons cannot
15 be served with process in this action until they are identified by their real names. Wilson must
16 take steps promptly to discover the full name (i.e., first and last name) of each Doe defendant
17 and provide that information to the court in an amendment to his pleading that explains what
18 each such person did or failed to do that caused a violation of his constitutional rights. The
19 burden remains on the plaintiff; the court will not undertake to investigate the names and
20 identities of unnamed defendants.

21 Finally, plaintiff is cautioned that if he wants to challenge the 2009 parole denial (e.g.,
22 by alleging the evidence was insufficient to support the decision), he needs to file a habeas
23 corpus petition after he exhausts state court remedies for each claim he wishes to present. While
24 a civil rights action is available under Wilkinson v. Dotson, supra, to challenge parole
25 procedures and perhaps to obtain another parole hearing, the normal way to challenge a parole
26 denial decision is to file a habeas petition.


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

CONCLUSION

For the foregoing reasons, the complaint fails to state a claim upon which relief may be granted and is dismissed with leave to amend. The amended complaint must be filed no later than **November 5, 2010**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Plaintiff is cautioned that his amended complaint must be a complete statement of his claims and will supersede existing pleadings. See London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint.") Failure to file the amended complaint by the deadline will result in the dismissal of the action.

IT IS SO ORDERED.

Dated: September 27, 2010



SUSAN ILLSTON
United States District Judge