

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS ROMERO BURNETT,
Plaintiff,
v.
ANGELA MCNULTY, et al.,
Defendants.

Case No. [17-cv-02998-WHO](#) (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff Carlos Romero Burnett alleges in this federal civil rights action that his state conviction is invalid and that in consequence he is owed money damages by the prosecutors and his appellate attorney. The United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994) barred claims brought under 42 U.S.C. § 1983 that, if successful, would appear to invalidate a conviction or sentence that has not already been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus. Burnett’s case appears to do what *Heck* precludes. Accordingly, this suit is DISMISSED.

1 **BACKGROUND**

2 In 2015, a Monterey County Superior Court jury convicted Burnett of possessing a
3 weapon in a penal institution. *People v. Burnett*, No. H042861, 2017 WL 25499 at *1
4 (Cal. Ct. App. Jan. 3, 2017). He was sentenced to 25 years to life in state prison, a
5 sentence to be served consecutively to the sentences for first degree murder and attempted
6 murder he was already serving. *Id.* In 2017, the state appellate court affirmed the
7 conviction. *Id.*

8 It is his 2015 conviction and sentence that Burnett contends are invalid.

9 **DISCUSSION**

10 **A. Standard of Review**

11 In its initial review of this pro se complaint, this Court must dismiss any claim that
12 is frivolous or malicious, or fails to state a claim on which relief may be granted, or seeks
13 monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C.
14 § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police*
15 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

16 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
18 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
19 plausibility when the plaintiff pleads factual content that allows the court to draw the
20 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
21 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
22 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
23 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55
24 (9th Cir. 1994).

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

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B. Legal Claims

In order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus. *Heck*, 512 U.S. at 486-487. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under section 1983. *Id.* at 487.

Where, as in this case, a state prisoner seeks damages in a section 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has been invalidated. *Id.* at 487.

A judgment that defendants violated Burnett’s constitutional rights in connection with his trial and sentence would necessarily imply the invalidity of his conviction or sentence. Because it is not clear from the complaint that his conviction has been invalidated, this section 1983 suit is barred by *Heck*. Accordingly, the action will be dismissed. Burnett may refile his suit if he can show that his conviction has been invalidated in one of the ways specified in *Heck*.

CONCLUSION

This federal civil rights action is DISMISSED. The Clerk shall enter judgment in favor of defendants, and close the file.

IT IS SO ORDERED.

Dated: July 20, 2017


WILLIAM H. ORRICK
United States District Judge