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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRUCE A. ROBINSON,

No. C 09-05526 CW (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

OAKLAND POLICE DEPT., et al.,

Defendants.

Plaintiff, who is confined at the Santa Rita Jail, has filed this pro se civil rights action under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. Plaintiff sues Defendants for the alleged violation of his constitutional rights during the course of their investigation on September 26, 2008. He alleges that Defendants "responded to a crim[e] scene[,] conducted an investigation . . . collected some evidence but faild [sic] to collect and preserve evidence which had . . . exculpatory value [and] gave evidence back to the victim without preserveing [sic] it." (Compl. at 3.) He adds that "because of this" he has been "held in Alameda County Jail for 13 mo. and counting without no other way to prove my innocents [sic]." (Id.) He seeks money damages.

Venue is proper in this Court because the injuries complained of occurred in Alameda County, which is located within the Northern District of California. See 28 U.S.C. § 1391.

STANDARD OF REVIEW

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

1 In its review, the court must identify any cognizable claims and
2 dismiss any claims that are frivolous, malicious, fail to state a
3 claim upon which relief may be granted or seek monetary relief from
4 a defendant who is immune from such relief. Id. § 1915A(b)(1), (2).
5 Pro se pleadings must be liberally construed. Balistreri v.
6 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must
8 allege two essential elements: (1) that a right secured by the
9 Constitution or laws of the United States was violated, and
10 (2) that the alleged violation was committed by a person acting
11 under the color of state law. West v. Atkins, 487 U.S. 42, 48
12 (1988).

13 DISCUSSION

14 Plaintiff seeks damages for the alleged violation of his
15 constitutional rights in connection with the investigation
16 conducted by Defendants which led to his confinement in jail,
17 presumably due to criminal charges stemming from his arrest. In
18 order to recover damages for allegedly unconstitutional conviction
19 or imprisonment, or for other harm caused by actions whose
20 unlawfulness would render a conviction or sentence invalid, a 42
21 U.S.C. § 1983 plaintiff must prove that the conviction or sentence
22 has been reversed on direct appeal, expunged by executive order,
23 declared invalid by a state tribunal authorized to make such
24 determination, or called into question by a federal court's
25 issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S.
26 477, 486-487 (1994). A claim for damages bearing that relationship
27 to a conviction or sentence that has not been so invalidated is not
28 cognizable under § 1983. Id. at 487.

1 When a state prisoner seeks damages in a § 1983 suit, the
2 district court must consider whether a judgment in favor of the
3 plaintiff would necessarily imply the invalidity of his conviction
4 or sentence; if it would, the complaint must be dismissed unless
5 the plaintiff can demonstrate that the conviction or sentence has
6 already been invalidated. Id. The court should not stay any
7 § 1983 claim for damages implicating the validity of a criminal
8 conviction or sentence until criminal proceedings are completed.
9 Edwards v. Balisok, 520 U.S. 641, 649 (1997). Heck makes it clear
10 that a § 1983 "cause of action for damages attributable to an
11 unconstitutional conviction or sentence does not accrue until the
12 conviction or sentence has been invalidated." Heck, 512 U.S. at
13 489-90 (footnote omitted). Any such claim is not cognizable and
14 therefore should be dismissed. See Edwards, 520 U.S. at 649;
15 Butterfield v. Bail, 120 F.3d 1023, 1025 (9th Cir. 1997) (claim
16 barred by Heck may be dismissed under Rule 12(b)(6)); Trimble v.
17 City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995) (claim barred
18 by Heck may be dismissed sua sponte without prejudice under
19 28 U.S.C. § 1915).

20 Plaintiff's claims would, if meritorious, imply the invalidity
21 of his state arrest, detention and any subsequent conviction. Heck
22 generally bars claims challenging the validity of an arrest,
23 prosecution or conviction. See Guerrero v. Gates, 357 F.3d 911,
24 918 (9th Cir. 2004) (Heck barred plaintiff's claims of wrongful
25 arrest, malicious prosecution and conspiracy among police officers
26 to bring false charges against him); Cabrera v. City of Huntington
27 Park, 159 F.3d 374, 380 (9th Cir. 1998) (Heck barred plaintiff's
28 false arrest and imprisonment claims until conviction was

1 invalidated); Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996)
2 (Heck barred plaintiff's claims that defendants lacked probable
3 cause to arrest him and brought unfounded criminal charges against
4 him). Heck also bars claims which necessarily implicate the
5 validity of pending criminal charges. See Harvey v. Waldron, 210
6 F.3d 1008, 1014 (9th Cir. 2000).

7 Because Plaintiff was involved in ongoing state criminal
8 proceedings when he filed these actions and has not informed the
9 Court since that charges against him have been dismissed or that
10 any resulting conviction has been overturned or invalidated by a
11 state tribunal, these actions must be DISMISSED. The dismissal is
12 without prejudice to Plaintiff bringing a new action raising these
13 claims should he satisfy the Heck pleading requirements.

14 For the foregoing reasons, this action is hereby DISMISSED
15 without prejudice. The Clerk of the Court shall close the file and
16 terminate any pending motions.

17 IT IS SO ORDERED.

18 Dated: 4/20/2010



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BRUCE A. ROBINSON,

5 Plaintiff,

6 v.

7 OAKLAND POLICE DEPT. et al,

8 Defendant.

Case Number: CV09-05526 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on April 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Bruce A. Robinson AWB805
16 Santa Rita Jail
17 5325 Broder Blvd.
18 Dublin, CA 94568

19 Dated: April 20, 2010

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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