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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROYLAND RICE,)	No. C 11-02886 EJD (PR)
Plaintiff,)	ORDER OF DISMISSAL
vs.)	
TERRY F. SCHILLINGER, et al.,)	
Defendants.)	

On June 13, 2011, Plaintiff, who is currently being detained at the Glenn E. Dyer Detention Facility in Oakland, filed in pro se a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s motion for leave to proceed in forma pauperis will be granted in a separate order.

DISCUSSION

A. Standard of Review

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. § 1915A(a). In its review the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state

1 a claim upon which relief may be granted, or seek monetary relief from a defendant
2 who is immune from such relief. Id. at 1915A(b)(1),(2). Pro se pleadings must be
3 liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
4 1990).

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

9 **B. Plaintiff's Claims**

10 A claim for damages for an allegedly unconstitutional conviction or
11 imprisonment, or for other harm caused by actions whose unlawfulness would render
12 a conviction or sentence invalid is not cognizable under § 1983. Heck v. Humphrey,
13 512 U.S. 477, 487 (1994).¹ A plaintiff must prove that the conviction or sentence has
14 been reversed on direct appeal, expunged by executive order, declared invalid by a
15 state tribunal authorized to make such determination, or called into question by a
16 federal court's issuance of a writ of habeas corpus. Id. at 486-87.

17 According to the complaint and attachments thereto, Plaintiff was arrested on
18 February 18, 2011, for the attempted robbery of an Orchard Supply Hardware Store in
19 El Cerrito, California. Plaintiff was positively identified by the cashier whom he
20 attempted to rob using a pistol. Plaintiff attached to his complaint a copy of the
21 transcript of the preliminary hearing which took place on March 17, 2011; at the
22 conclusion of the hearing, the trial judge set the date of arraignment for April 4, 2011.
23 In his complaint, Plaintiff claims that the initial arrest was without probable cause, and
24 that the arresting officer's actions violated his Fourth Amendment right against
25 unreasonable search and seizure. (Compl. at 9-10.) Plaintiff also alleges that officers
26 violated his right to due process in the manner in which they searched and impounded

27 _____
28 ¹Heck applies equally to claims brought under §§ 1983, 1985 and 1986.
McQuillion v. Schwarzenegger, 369 F.3d 1091, 1098, n. 4 (9th Cir. 2004).

1 his van. (Id. at 11.) Plaintiff claims that he has remained incarcerated for four
2 months, and that he has “suffered and continues to suffer humiliation, damage to his
3 reputation and psychological trauma,” and that he has lost his job, wages, and all his
4 personal belongings. (Id. at 13-14.) Plaintiff also names as defendants the
5 prosecutors, the trial judge, and his public defender. (Id. at 3-4.)

6 Plaintiff’s allegations that he is unlawfully incarcerated due to Defendants’
7 allegedly unconstitutional actions would, if successful, necessarily imply the
8 invalidity of his state court conviction, assuming that his state trial proceedings have
9 concluded. Furthermore, he has failed to show that the conviction has otherwise been
10 reversed. As such, Plaintiff’s claims are barred by Heck and must be dismissed.

11 Accordingly, Plaintiff’s complaint is DISMISSED without prejudice to
12 Plaintiff’s filing a new complaint if the challenged conviction and sentence are later
13 invalidated. See Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995)
14 (claim barred by Heck may be dismissed sua sponte without prejudice under 28
15 U.S.C. § 1915).

16
17 **CONCLUSION**

18 Plaintiff’s complaint is hereby DISMISSED without prejudice for failure to
19 state a cognizable claim for which relief may be granted. 28 U.S.C. § 1915A(b)(1),
20 (2).

21 The Clerk shall close the file.

22
23 DATED: November 8, 2011


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROYLAND RICE,
Plaintiff,

Case Number: CV11-02886 EJD

CERTIFICATE OF SERVICE

v.

TERRY F. SCHILLINGER, et al.,
Defendants.

_____/

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

That on 11/14/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Royland Rice PFN UEQ 820
The Glenn E. Dyer Detention Facility
550 6th Street
Oakland, CA 94807

Dated: 11/14/2011

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk