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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CEDRIC CHESTER JOHNSON,
Plaintiff,

v.

NERISSA HUERTAS, et al.,
Defendants.

Case No. 16-05948 EJD (PR)

ORDER OF DISMISSAL

Plaintiff, a California state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against the district attorney of Monterey County, his appellate attorney, Officer Manuel Fernandez of the Seaside Police Department, and Judge Pamela Butler. Plaintiff's motion for leave to proceed in forma pauperis shall be addressed in a separate order.

DISCUSSION

A. 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. See 28 U.S.C. § 1915A(a). In its review, the court must identify any

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

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

9 **B. Plaintiff’s Claims**

10 Plaintiff claims that he was falsely accused of attempted murder and assault on
11 three police officers of the Seaside Police Department. (Compl. at 3.) He claims that the
12 district attorney made a plea bargain and then “renigged on the deal [*sic*].” (Id.) Plaintiff
13 claims that Judge Butler “allowed it.” (Id.) Plaintiff claims that Officer Fernandez lied
14 “and said [Plaintiff] ran the car into them.” (Id.) Plaintiff claims that the police found
15 another suspect with incriminating evidence. (Id.) Lastly, he claims ineffective assistance
16 of counsel. (Id.) Plaintiff seeks damages.

17 A claim for damages for an allegedly unconstitutional conviction or imprisonment,
18 or for other harm caused by actions whose unlawfulness would render a conviction or
19 sentence invalid is not cognizable under § 1983. Heck v. Humphrey, 512 U.S. 477, 487
20 (1994). A plaintiff must prove that the conviction or sentence has been reversed on direct
21 appeal, expunged by executive order, declared invalid by a state tribunal authorized to
22 make such determination, or called into question by a federal court’s issuance of a writ of
23 habeas corpus. Id. at 486-87.

24 Here, Plaintiff’s allegations that he is unlawfully incarcerated due to Defendants’
25 allegedly unconstitutional actions would, if successful, necessarily imply the invalidity of
26 his state court conviction. However, Plaintiff has failed to show that the conviction has
27 been reversed. See id. As such, Plaintiff’s claims are barred by Heck and must be

1 dismissed.

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

6 Furthermore, although a district court may construe a habeas petition by a prisoner
7 attacking the conditions of his confinement as a civil rights action under 42 U.S.C. § 1983,
8 see Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the opposite is not true: A civil
9 rights complaint seeking habeas relief should be dismissed without prejudice to bringing it
10 as a petition for writ of habeas corpus. See Trimble, 49 F.3d at 586. Accordingly, Plaintiff
11 may seek relief for his allegedly unlawful conviction by filing a petition for a writ of
12 habeas corpus pursuant to 28 U.S.C. § 2254.

13
14 **CONCLUSION**

15 For the reasons set forth above, this action is DISMISSED without prejudice.

16 The Clerk shall enclose two copies of the court's form petition with a copy of this
17 order to Plaintiff. **IT IS SO ORDERED.**

18
19 **Dated:** 4/5/2017



EDWARD J. DAVILA
United States District Judge