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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CEDRIC CHESTER JOHNSON,
Plaintiff,

v.

EVAN GEORGE, et al.,
Defendants.

Case No. 16-05950 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 his appellate attorney, the public defender, and his trial attorneys in connection with his state conviction. 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 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune
2 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
3 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

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

8 **B. Plaintiff’s Claims**

9 Plaintiff claims that appellate counsel rendered ineffective assistance in connection
10 with his state criminal conviction appeal. (Compl. at 3.) Plaintiff continues with a string
11 of allegations that the attorneys involved in his state conviction rendered ineffective
12 assistance. (Id. at 5-9.) Plaintiff seeks damages.

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

20 Here, Plaintiff’s allegations that he is unlawfully incarcerated due to Defendants’
21 ineffective assistance under the Sixth Amendment would, if successful, necessarily imply
22 the invalidity of his state court conviction. However, Plaintiff has failed to show that the
23 conviction has been reversed. See id. As such, Plaintiff’s claims are barred by Heck and
24 must be dismissed.

25 Accordingly, Plaintiff’s complaint is DISMISSED without prejudice to Plaintiff’s
26 filing a new complaint if the challenged conviction and sentence are later invalidated. See
27 Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995) (claim barred by Heck

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may be dismissed sua sponte without prejudice under 28 U.S.C. § 1915).

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

CONCLUSION

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

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

Dated: 4/5/2017


EDWARD J. DAVILA
United States District Judge