

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

)

8:09CV361

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Plaintiff,

)

)

v.

)

**MEMORANDUM
AND ORDER**

)

ETTA GRAVES, SHARON SMITH,

)

JANE DOE, clerk's assistant, and

)

CLERKS OF DOUGLAS COUNTY,

)

NEBRASKA, County Courts,

)

)

Defendants.

)

Plaintiff filed his Complaint in this matter on October 7, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [5](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

_____ Plaintiff filed his Complaint on October 7, 2009, against the county court “Clerks of Douglas County, Nebraska” and three other individuals. (Filing No. [1](#) at CM/ECF p. 1.) Condensed and summarized, Plaintiff alleges that Defendants denied his right to appeal in “State of Nebraska v. Billy Tyler, CR09-12785.” (*Id.* at CM/ECF pp. 6, 9.) Plaintiff also alleges that Defendants issued an illegal arrest warrant in “CR09-12785.” (*Id.* at CM/ECF p. 5.) Plaintiff seeks \$10,000,00.00 in monetary damages. (*Id.* at CM/ECF p. 6.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); see also [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

III. DISCUSSION OF CLAIMS

Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [Preiser v. Rodriguez](#), 411 U.S. 475 (1973), and [Heck v. Humphrey](#), 512 U.S. 477 (1994), if success on the merits of a civil rights claim would necessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable

disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [Heck, 512 U.S. at 486-87](#).

As discussed above, Plaintiff alleges that Defendants issued an “illegal” arrest warrant and denied his right to appeal in “State of Nebraska v. Billy Tyler, CR09-12785.” (Filing No. [1](#) at CM/ECF pp. 1-18.) These allegations necessarily implicate the validity of his arrest and conviction in that case. As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff’s Complaint without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Complaint (filing no. [1](#)) is dismissed without prejudice.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

December 11, 2009.

BY THE COURT:

Richard G. Kopf
United States District Judge

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