



1 2012, the State of Nevada filed an information charging Plaintiff with grand larceny. Plaintiff  
2 maintains he had no knowledge of the redemption ticket inside the purse, and merely intended to  
3 give the purse to a casino employee for safeguarding.

4 Plaintiff filed his initial Complaint (#1) on December 17, 2012, alleging claims for false  
5 arrest and malicious prosecution. Plaintiff filed a Motion for Leave to Amend the Complaint (#2)  
6 on December 18, 2012, with a proposed Amended Complaint alleging claims for Ineffective  
7 Assistance of Counsel and Denial of Speedy Trial. The Court granted leave to amend, and the  
8 Amended Complaint was filed. *See March 6, 2013 Order, Doc. #3*. The Court noted that the  
9 original Complaint (#1) was superseded by the Amended Complaint (#4), which did not re-allege  
10 the false arrest or malicious prosecution claims. *Id.* The Court nevertheless addressed the merits of  
11 those two claims. *Id.* The Court dismissed the Amended Complaint (#4), with leave to amend to  
12 re-allege the false arrest claim only. *Id.* at 6:27-7:3.

## 13 DISCUSSION

### 14 **I. Screening the Complaint**

15 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a  
16 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
17 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
18 relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is  
19 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
20 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
21 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
22 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed  
23 as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke*  
24 *v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is  
25 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,  
26 whether or not there are judicially noticeable facts available to contradict them.” *Denton v.*  
27 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under Section 1915(e),  
28 the plaintiff should be given leave to amend the complaint with directions as to curing its

1 deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be  
2 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). For the  
3 purposes of this screening, all of Plaintiff’s factual allegations are taken as true.

4 The Court construes the Second Amended Complaint (#6) as asserting the following claims  
5 under 42 U.S.C. § 1983: (1) violation of due process; (2) *Apprendi* violations; (3) prosecutorial  
6 misconduct; (4) false arrest; and (5) *Brady* violations. Plaintiff seeks damages of \$500,000,000.  
7 Despite being granted leave to re-allege only a claim for false arrest, *See March 6, 2013 Order*,  
8 *Doc. # 3* at 6:27-7:3, the Court will address the merits of these claims for the sake of thoroughness.  
9 Plaintiff’s fourth and fifth claims cannot be analyzed in any event, however, because the Court  
10 finds them indecipherable. Claim four alleges that “under color of state law when equal protection  
11 and equal treatment is deny (sic) by District Attorney Trevor Hayes, when Defense’s criminal  
12 offense as a crime to not return Abandon or lost property.” *See Am. Compl., Doc. #6* at 5:1-7.  
13 Claim five alleges that Plaintiff “has been denied legal process to pursue a collateral attack by  
14 presenting state and federal writ of habeas corpus petitions to state and federal courts violates state  
15 law chapter 177.” *Id.* at 6:1-4. Because the Court cannot construe these allegations as any claims  
16 for relief, and because Plaintiff only had leave to allege a claim for false arrest, the Court will  
17 dismiss them.

18 **a. Heck v. Humphrey**

19 The Supreme Court has held that

20 to recover damages for allegedly unconstitutional conviction or  
21 imprisonment, or for other harm caused by actions whose  
22 unlawfulness would render a conviction or sentence invalid, a § 1983  
23 plaintiff must prove that the conviction or sentence has been reversed  
on direct appeal, expunged by executive order, declared invalid by a  
state tribunal authorized to make such determination, or called into  
question by a federal court’s issuance of a writ of habeas corpus[.]

24 *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). “A claim for damages bearing that relationship  
25 to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.” *Id.* at  
26 487. When a state prisoner seeks damages under section 1983, the district court “must consider  
27 whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction  
28 or sentence.” *Id.* If it would, the court must dismiss the complaint unless the conviction or

1 sentence has already been invalidated. *Id.* If the court determines that the plaintiff’s success would  
2 not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, “the  
3 action should be allowed to proceed, in the absence of some other bar to the suit.” *Id.* As an  
4 example of “some other bar,” the Court noted that if a plaintiff brings a section 1983 claim “during  
5 the pendency of his criminal trial, [...] abstention may be an appropriate response[.]” *Id.* at 487 n.  
6 8.

7 Plaintiff does not coherently address the status of his underlying state criminal proceeding  
8 in the instant pleading papers. A court, however, “may take notice of proceedings in other courts,  
9 both within and without the federal judicial system, if those proceedings have a direct relation to  
10 matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971  
11 F.2d 244, 248 (9th Cir. 1992). The merits of Plaintiff’s claims in this litigation depend almost  
12 entirely upon the status of his underlying state prosecution. Therefore, the Court takes judicial  
13 notice of *State of Nevada v. Tony Smith*, in the Eight Judicial District Court of Clark County,  
14 Nevada, Case No. C-12-285424-1. Therein, a judgment of conviction for gross misdemeanor  
15 charges of grand larceny was entered against Plaintiff on May 1, 2013.

16 Because judgment in his favor would imply the invalidity of his conviction, Plaintiff’s  
17 claims are only cognizable if his conviction has been reversed on direct appeal, expunged by  
18 executive order, declared invalid by a state tribunal, or called into question by a writ of habeas  
19 corpus. Plaintiff does not plead any facts or offer any support that suggests his conviction has been  
20 invalidated. Plaintiff’s conviction is therefore fatal to his claims, which are not cognizable under  
21 section 1983. The Court will accordingly dismiss the Second Amended Complaint (#6).

22 The proper avenue for Plaintiff to pursue relief is by filing a writ of habeas corpus under 28  
23 U.S.C. § 2254. *See, e.g., Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2003). Plaintiff is  
24 instructed, however, that a federal court will not hear a petition for habeas corpus for a person in  
25 state custody unless it appears “the applicant has exhausted the remedies available in the courts of  
26 the State.” 28 U.S.C.A. § 2254 (b)(1). “A state court prisoner’s federal habeas petition must be  
27 dismissed if he has not exhausted remedies available in the state.” 28 U.S.C. § 2254(b); *see also*  
28 *Rose v. Lundy*, 455 U.S. 509, 512 (1982).

1 ...

2 **b. Plaintiff's Other Motions**

3 In addition to his Amended Complaint (#6), Plaintiff filed numerous other motions. In his  
4 Motion (#8), Plaintiff seeks redress for, among other things, alleged difficulty and delay in  
5 receiving rulings and transcripts for his various state habeas petitions. This Court, however, is one  
6 of limited jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. The Court does not serve supervisory or  
7 appellate roles as regards Nevada state courts. Due to lack of jurisdiction, then, the Court will deny  
8 Plaintiff's Motion (#8). For the same reason, the Court will deny Plaintiff's Motion (#17), which  
9 seeks release of "confidential information" from the Las Vegas Metropolitan Police Department  
10 Citizen Review Board's dismissal of Plaintiff's complaints against his arresting officers. Plaintiff's  
11 Motion "that Casino Ticket be Consider as no Evidence" (#10) is, generally, indecipherable.  
12 Furthermore, insofar as it appears to implicate Plaintiff's state conviction and the claims dismissed  
13 within this Order, the Court will deny the Motion (#10) as moot. Plaintiff's Motion for Jury Trial  
14 (#14) for the same section 1983 claims, likewise, will be denied as moot. Plaintiff's Motion for  
15 Court Order (#15) rehashes the claims and arguments presented in his Amended Complaint (#6),  
16 and will be denied as duplicative. Finally, Plaintiff's two Motions to Reduce Charge (#11, #16)  
17 both reiterate the Complaint's arguments and seek a review of his state conviction that this Court is  
18 jurisdictionally unable to provide. Accordingly,

19 **IT IS HEREBY ORDERED** that Plaintiff's Amended Complaint (#6) is **dismissed**  
20 without prejudice. Plaintiff is instructed not to re-file any of the dismissed claims until and unless  
21 his state conviction is set aside or otherwise invalidated. If Plaintiff files any barred claims in this  
22 Court regarding his state conviction while the conviction is still in place, the Court will recommend  
23 to the District Judge that the claims be dismissed with prejudice.

24 **IT IS FURTHER ORDERED** that Plaintiff's Motion that State Continues to Fail to  
25 Respond (#8) is **denied**.

26 **IT IS FURTHER ORDERED** that Plaintiff's Motion that Casino Ticket be Considered as  
27 no Evidence (#10) is **denied**.

28 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Reduce Charge (#11) is **denied**.

