

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JACK ALLEN CORBIN,	:	CIVIL NO. 1:17-CV-513
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
HEATHER NEWPHER,	:	
RONALD JACKSON,	:	
	:	
Defendants	:	

MEMORANDUM

Plaintiff, Jack Allen Corbin (“Corbin”), an inmate currently confined at the York County Prison, in York, Pennsylvania, commenced this action pursuant to 42 U.S.C. § 1983. (Doc. 1). Named as defendants are probation officer Heather Newpher and public defender Ronald Jackson. At the same time he filed the complaint, Corbin filed a motion for leave to proceed *in forma pauperis*. (Doc. 2). An initial screening of the complaint has been conducted, and for the reasons set forth below, the motion to proceed *in forma pauperis* will be granted, and the complaint will be dismissed.

I. Screening Provisions of the Prison Litigation Reform Act

The Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996), authorizes a district court to review a complaint in a civil action in which a prisoner is proceeding *in forma pauperis* or seeks redress against a governmental

employee or entity. See 28 U.S.C. § 1915(e)(2),¹ 28 U.S.C. § 1915A². The court is required to identify cognizable claims and to *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B), 28 U.S.C. § 1915A(b). This initial screening is to be done as soon as practicable and need not await service of process. See 28 U.S.C. § 1915A(a).

II. Discussion

Corbin's claims are filed pursuant to 42 U.S.C. § 1983. Section 1983 of Title 42 of the United States Code offers private citizens a cause of action for violations of federal law by state officials. See 42 U.S.C. § 1983. The statute provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

¹ Section 1915(e)(2) of Title 28 of the United States Code provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that --

(A) the allegation of poverty is untrue; or

(B) the action or appeal --

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

² Section 1915A(b) of Title 28 of the United States Code provides:

(b) On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Id.; see also Gonzaga Univ. v. Doe, 536 U.S. 273, 284-85 (2002); Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). See also Barna v. City of Perth Amboy, 42 F.3d 809, 815 (3d Cir. 1994).

“As a rule, habeas petitions and § 1983 complaints are not ‘coextensive either in purpose or effect.’ Where a state prisoner seeks to attack the fact or duration of his conviction or sentence, he must seek relief through a habeas petition, not a § 1983 complaint.” Rushing v. Pennsylvania, 2016 WL 25579, at *2-3 (3d Cir. 2016) (quoting Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002)); see also Strickland v. Washington, 466 U.S. 668 (1984). “The underlying purpose of proceedings under the ‘Great Writ’ of habeas corpus has traditionally been to ‘inquire into the legality of the detention, and the only judicial relief authorized was the discharge of the prisoner or his admission to bail, and that only if his detention were found to be unlawful.” Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002) (quoting *Powers of Congress and the Court Regarding the Availability and Scope of Review*, 114 Harv.L.Rev. 1551, 1553 (2001)).

Corbin sets forth claims of ineffective assistance of counsel and challenges his arrest following a technical violation of probation. Corbin alleges that in November

2016, he presented to the probation office and submitted to a urine test. (Id. at 4). Corbin tested positive for cocaine and was arrested for a technical violation of probation. (Id.) Corbin alleges that his due process rights were violated because he was not afforded a detention hearing. (Id. at 5). Corbin further claims that public defender Jackson was ineffective for failing to object to his alleged illegal detention. (Id. at 2). He also states that he attempted to file two habeas petitions, but “counsel would not let them issue.” (Doc. 1, at 6).

The court finds that Corbin’s claims must be brought in a petition for writ of habeas corpus. Corbin’s allegations of ineffective assistance of counsel and the challenge to his probation revocation are an attack on the fact of his conviction and sentence. Consequently, Corbin must raise his claims in a petition for writ of habeas corpus, not in a § 1983 civil rights complaint.

Moreover, with respect to the claim that defendant Jackson provided ineffective assistance of counsel, public defenders and court-appointed counsel do not act under color of law for purposes of federal civil rights litigation when acting within the scope of their professional duties. See Polk County v. Dodson, 454 U.S. 312, 318 n. 7 (1981); Black v. Bayer, 672 F.2d 309, 320 (3d Cir. 1982), abrogation on other grounds recognized in D.R. by L .R. v. Middle Bucks Area Vocational Technical School, 972 F.2d 1364 (3d Cir. 1992). Corbin states that defendant Jackson was his court-appointed attorney and he “did not ask for his . . . assistance.” (Doc. 1, at 3). Defendant Jackson was not acting under color of law and is not a properly named defendant in this civil rights action. See Polk, 454 U.S.

at 318 (“a lawyer representing a client is not, by virtue of being an officer of the court, a state actor ‘under color of state law’ within the meaning of § 1983”).

III. Conclusion

Based on the foregoing, the court will dismiss Corbin’s complaint for failure to state a claim, as his claims must be brought in a separate petition for writ of habeas corpus.³ An appropriate order will issue.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

Dated: April 6, 2017

³ Allowing Corbin leave to amend would be futile given that his claims are not cognizable in a federal civil rights complaint. See Foman v. Davis, 371 U.S. 178, 182 (1962) (leave to amend under Federal Rule of Civil Procedure 15 may be denied in cases of undue delay, bad faith or dilatory motive, undue prejudice, or futility of amendment).