

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

FILED

DEC 08 2011


CLERK

| | | |
|------------------------------|---|------------------|
| CHRISTOPHER JOHN JOYNER, |) | CIV. 11-5048-RHB |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| GLENN A. BRENNER, States |) | ORDER |
| Attorney, Pennington County; |) | |
| JENNIFER UTTER; PAUL J. |) | |
| BRANKIN; and MATTHEW |) | |
| STEPHENS, |) | |
| |) | |
| Defendants. |) | |

On June 2, 2011, Christopher John Joyner commenced this action seeking relief under 42 U.S.C. § 1983. Joyner alleges that his constitutional rights have been violated as a result of malicious prosecution. In an Order dated July 20, 2011, the Court, after reviewing the complaint, found that Joyner was seeking habeas relief as he requested the following:

I wanted the trial to be more favorable but because of the inconsistencies with trial strategy, and only 3 weeks of preparation - opposed to 8 mo's the prosecution had to prepare the prosecution, I knew that the odds of winning would be scarce. I tried for an appeal and the defendants blocked this away, or Counselor Stephens should have immediately after the trial verdict, filed an immediate notice of appeal, to [sic] much time has elapsed and then I filed a habeas, a 1 year later and recently found out from the presiding judge that the writ of habeas was frivolous. All I want is a habeas hearing that will exonerate me. Thanks.

Complaint, Docket #1.

On September 27, 2011, the Court received a letter in which Joyner requests that the action be construed as a "Bivens Intentional Tort Claim." The Court construes this letter to be a motion to amend the complaint. Before allowing the complaint to be amended, however, the Court is required by 28 U.S.C. § 1915A(b), to screen the complaint. Under § 1915A, the Court may dismiss a complaint if it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915A. A case fails to state a claim "if as a matter of law it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1832, 104 L. Ed. 2d 338 (1989) (citing Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 599 (1984)).

In his complaint, Joyner alleges that defendants conspired against him to maliciously prosecute him for a crime that he did not commit. Joyner, in the "Relief" section of the complaint form, specifically asked for a habeas hearing. Now, Joyner contends that he is seeking to state a claim of an "Intentional Federal Tort Claim under Color of Law." See Docket #9.

It is well settled, however, that a "prisoner's label cannot be controlling." Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996) (citing Preiser v. Rodriguez,

411 U.S., 475, 489-90, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973)). Here, as set forth in the original complaint and unaltered by the letter dated September 27, 2011, Joyner is seeking a habeas hearing and release from incarceration. This remedy can only be achieved through a writ of habeas corpus. See Preiser, 411 U.S. at 484, 93 S. Ct. at 1833. The proper vehicle for such relief is not a claim under § 1983 or through even a Bivens action, which requires that defendants acted under the color of federal authority. As a result, the Court finds that this proposed amendment does not state a claim upon which relief may be granted and therefore, the complaint may not proceed.

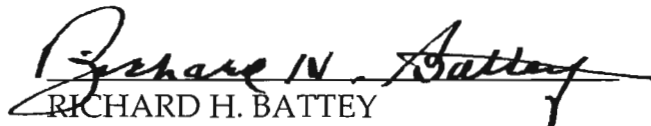
Accordingly, it is hereby

ORDERED that motion to amend the complaint (Docket #9) is denied.

IT IS FURTHER ORDERED that plaintiff remains obligated to pay the filing fee in accordance with the Order dated July 20, 2011.

Dated this 8th day of December, 2011.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE