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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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8 PAMELA K. SCOTT,

Plaintiff,

9 v.

10 COLIN HAYES, et al.,

Defendants.
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CASE NO. C17-5619 BHS

ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED *IN*
FORMA PAUPERIS

13 This matter comes before the Court on Plaintiff Pamela K. Scott's ("Scott")
14 motion to proceed *in forma pauperis*. Dkt. 1.

15 On August 4, 2017, Scott filed the instant motion and proposed complaint. She
16 alleges a double jeopardy violation and a malicious prosecution stemming from an
17 amended state court judgment and sentence ("J&S"). Dkt. 1-1 at 3. After Scott was
18 convicted in 2011, the court entered a sentence of twelve months of incarceration
19 followed by 49 months of community custody. *Id.* at 5. As she was approaching the end
20 of her community custody term, the Clark County prosecutor filed a motion to amend the
21 J&S asserting that the original intent of the sentencing court was to sentence Scott to 61
22 months of community custody. *Id.* at 18–19. The court granted the motion over Scott's

1 opposition and entered an order amending the J&S. *Id.* Scott immediately appealed the
2 amended J&S. *Id.*

3 While the matter was on appeal, another Clark County prosecutor attempted to
4 settle. When Scott refused to settle, the prosecutor threatened to revoke her community
5 custody status for certain violations, which could have resulted in Scott being returned to
6 prison for 49 months. *Id.* at 32. Scott declined the prosecutor’s offer, and the prosecutor
7 filed a motion to revoke Scott’s community custody. *Id.* at 33. Three weeks later, the
8 prosecutor withdrew the motion to revoke Scott’s community custody because Scott
9 fulfilled the reported violations. *Id.* at 39. A few months later, the county filed its
10 appellate brief and conceded that the trial court erred by amending the J&S. *Id.* at 18–22.
11 The county requested that the appellate court should remand the case to the trial court
12 with instructions to strike the amended J&S. *Id.* at 22.

13 The district court may permit indigent litigants to proceed *in forma pauperis* upon
14 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a); W.D. Wash.
15 Local Rules LCR 3(b). However, the “privilege of pleading *in forma pauperis* . . . in
16 civil actions for damages should be allowed only in exceptional circumstances.” *Wilborn*
17 *v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986). The court has broad discretion in denying
18 an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.
19 1963), *cert. denied* 375 U.S. 845 (1963). Here, Scott’s affidavit and *in forma pauperis*
20 application show that she is unable to prepay fees and costs. *See* Dkt. 1.

21 However, even if a plaintiff satisfies the financial requirements for eligibility to
22 proceed *in forma pauperis*, the Court’s review of the application and underlying

1 | complaint is not complete. Under the *in forma pauperis* statute, the Court must dismiss
2 | the case *sua sponte* if it determines at any time that (1) the allegation of poverty is untrue,
3 | (2) the action is frivolous or malicious, (3) the complaint fails to state a viable claim, or
4 | (3) the action seeks monetary relief against an immune defendant. 28 U.S.C. §
5 | 1915(e)(2).

6 | In this case, Scott has failed to show that exceptional circumstances exist and
7 | defendants are immune from the alleged actions. While Scott was definitely placed in a
8 | stressful position when faced with additional prison time, Scott has failed to allege any
9 | action outside the scope of the assigned prosecutors. Thus, they are most likely entitled
10 | to absolute prosecutorial immunity. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 912 (9th Cir.
11 | 2012) (“Prosecutors performing their official prosecutorial functions are entitled to
12 | absolute immunity against constitutional torts.”). Moreover, even if immunity does not
13 | apply, malicious prosecution requires “that the defendants prosecuted [Scott] with malice
14 | and without probable cause, and that they did so for the purpose of denying [Scott] equal
15 | protection or another specific constitutional right.” *Freeman v. City of Santa Ana*, 68
16 | F.3d 1180, 1189 (9th Cir. 1995). Scott’s allegations do not rise to the level of malice or
17 | an action without probable cause because her probation officer declared under penalty of
18 | perjury that Scott had failed to complete at least two conditions of her community
19 | confinement. Dkt. 1-1 at 37. Therefore, the Court concludes that this is not a claim that
20 | meets the exceptional circumstance criteria to proceed *in forma pauperis*.

1 Likewise, the Court is unaware of any authority for the proposition that a plaintiff
2 may maintain a double jeopardy claim for civil damages. Therefore, the Court concludes
3 that this claim is frivolous.

4 In sum, the Court **DENIES** Scott's motion to proceed *in forma pauperis*. If Scott
5 chooses to proceed with this complaint, she shall pay the filing fee no later than
6 September 1, 2017. Failure to timely pay the fee will result in dismissal of Scott's
7 complaint without prejudice.

8 **IT IS SO ORDERED.**

9 Dated this 8th day of August, 2017.

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BENJAMIN H. SETTLE
13 United States District Judge
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