

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DWAYNE W. O'NEAL
202 Honorway
Madison, Alabama 35758

Petitioner,

v.

UNKNOWN OAKLAND CIRCUIT JUDGE,
UNKNOWN OAKLAND ASST. PROSECUTOR,
OAKLAND PROSECUTORS' OFFICE,
COUNTY OF OAKLAND, MICHIGAN,
1200 N. Telegraph Road,
Pontiac, Michigan 48075, et. al.
CHUCK SALTER, HENNEPIN COUNTY
DISTRICT ATTORNEY OFFICE, COUNTY OF HENNEPIN,
JUDGE B. NORD, 4th Judicial District Court,
300 S., 6th Street, Minneapolis, Minnesota 55487,
individually & officially,

Respondents.

ORDER

06-C-35-C

This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. §§ 1983 and 1985. Petitioner Dwayne W. O'Neal seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude

that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or 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, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2). Allegations are legally frivolous when they are "clearly baseless," meaning fanciful, fantastic, delusional, irrational, or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).

Petitioner has filed two proposed complaints in this case, dkt. ##2 and 3, that are identical in all material respects except that the caption in dkt. #2 reads "United States District Court Eastern District of Michigan" and the caption in dkt. #3 reads "United States District Court Western District of Wisconsin." I will disregard the proposed complaint with the caption "United States District Court Eastern District of Michigan" and consider the proposed complaint captioned "United States District Court Western District of Wisconsin" to be the operative pleading. In addition to these documents, plaintiff has filed a proposed amended complaint, dkt. #4. Ordinarily, an amended complaint replaces the original complaint and becomes the sole operative pleading in a case. However, the allegations in petitioner's proposed amended complaint appear designed to supplement, rather than

replace those in his proposed complaint. Therefore, I will consider both documents to be the complaint in this case.

The allegations in both of these documents span fewer than ten pages combined. Although succinct, petitioner's allegations have a paranoid quality that makes them difficult to accept as true. It is clear that petitioner believes that the actions taken by respondents are part of a larger conspiracy against him that has existed since the 1980s. Unfortunately for petitioner, his allegations are insufficient to state any claims under §§ 1983 or 1985(3).

From the allegations in his complaint, I understand petitioner to be alleging the following.

ALLEGATIONS OF FACT

On March 3, 1985, petitioner was arrested in Oakland County, Michigan for breaking and entering. Respondent County of Oakland filed a criminal complaint charging petitioner with breaking and entering. Respondents Unknown Asst. Prosecutor and County of Oakland arraigned petitioner on April 3, 1985 in the Circuit Court for Oakland County before the "48th District Court[']s Magistrate[']s Return" was filed in the office of the Oakland County Clerk. On April 15, 1985, respondents Unknown Asst. Prosecutor and County of Oakland filed a "Habitual Offender 4th Information" without providing notice as required by Michigan law. Respondents had established a policy of filing "Habitual

Offender Informations” against criminal defendants in respondent County of Oakland. Respondents did not file the “Magistrate[']s Return” until April 18, 1985. On September 30, 1985, petitioner pleaded guilty and respondent Unknown Oakland Circuit Judge sentenced him to a term of four to twenty years’ imprisonment. Petitioner served twelve years under the supervision of the state of Michigan, in prison and on parole. He was released from supervision in 1997.

On December 9, 2004, respondent Nord, a judge in the 4th Judicial District Court of Hennepin County, Minnesota, relied on the Michigan conviction in sentencing petitioner to a term of 14 months’ imprisonment in an unrelated case despite the fact that petitioner informed her that the conviction had been obtained illegally. Respondents Salter and Hennepin County District Attorney Office failed to investigate whether the Michigan conviction was reliable and appropriate to use as a sentence enhancer. In the Michigan case, petitioner was convicted and sentenced under the name Dwayne W. O’Neal; in Hennepin County, he was convicted and sentenced under the name Wendell Dwayne O’Neal. Respondent Nord stayed petitioner’s 14-month sentence for three years. Petitioner is appealing his sentence in the Minnesota court of appeals.

Respondents County of Oakland and County of Hennepin failed to train and supervise their employees, which led to the violation of petitioner’s rights.

DISCUSSION

Before discussing petitioner's allegations, it may be helpful to outline the legal principles that preclude petitioner from proceeding on any claims in this case. First, § 1983 provides a cause of action for individuals whose rights under federal law are violated by persons acting under color of state law. Pepper v. Village of Oak Park, 430 F.3d 805, 808 (7th Cir. 2005). A state official's violation of state law is not cognizable under § 1983. Waubanascum v. Shawano County, 416 F.3d 658, 666 (7th Cir. 2005) ("State law does not create duties under the federal constitution, and violations of state law are by themselves insufficient to impose liability under § 1983.").

Second, "before a § 1983 plaintiff may recover damages for alleged harm 'caused by actions whose unlawfulness would render a conviction or sentence invalid,' the plaintiff must first prove that his conviction or sentence has been reversed, expunged, or called into question by the grant of a petition for habeas corpus." VanGilder v. Baker, 435 F.3d 689, 691 (7th Cir. 2006) (quoting Heck v. Humphrey, 512 U.S. 477, 486-87 (1994)). This rule is designed to give effect to the principle that "civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." Heck, 512 U.S. at 486. When a plaintiff raises claims that are barred by Heck, the proper response is to dismiss the claims without prejudice. Simpson v. Rowan, 73 F.3d 134, 136 (7th Cir. 1995).

Third, to state a claim for conspiracy under § 1983 or § 1985(3), petitioner must

identify the parties to the conspiracy, the approximate date of the conspiracy and its purpose. Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). However, he need not allege the dates on which each member joined the conspiracy. Loubser v. Thacker, No. 05-3058, 2006 WL 549011, at *3 (7th Cir. Mar. 8, 2006). The crux of a civil conspiracy claim is the existence of an agreement among state officials or to inflict injury. Hernandez v. Joliet Police Dept., 197 F.3d 256, 263 (7th Cir. 1999). Section 1985(3) targets a narrower class of conspiracies than § 1983; it prohibits only those conspiracies that are motivated by a racial or class-based animus and that are “aimed at interfering with rights that are protected against private, as well as official, encroachment.” Green v. Benden, 281 F.3d 661, 665 (7th Cir. 2002). With these principles in mind, I turn to petitioner’s allegations.

A. State Law Claims

Two of petitioner’s claims do not state causes of action under federal law. These claims will be dismissed without prejudice to petitioner’s raising them in an appropriate state court.

1. Magistrate’s return

Petitioner’s first claim is that respondents Unknown Asst. Prosecutor and County of

Oakland lacked “procedural jurisdiction” to pursue legal proceedings against him in connection with the breaking and entering charge. Petitioner alleges that respondent Unknown Asst. Prosecutor arraigned him on April 3, 1985, and filed an information against him, charging him with breaking and entering before a “48th District Court[']s Magistrate[']s Return” was filed in the Oakland County Clerk’s Office. (Under Michigan law, a magistrate’s return is a document that is filed after a defendant waives or receives a preliminary examination. It certifies that probable cause exists to sustain the charge, authorizes the prosecutor to file an information and gives the circuit court personal jurisdiction over the defendant. People v. McGee, 672 N.W.2d 191, 199 (Mich. Ct. App. 2003).)

Petitioner’s allegations fail to state a claim. At most, they suggest a violation of his rights under Michigan law. They do not implicate any rights protected under federal law. As noted above, allegations that state officials have violated state law are insufficient to state a claim under § 1983. Therefore, petitioner will be denied leave to proceed on this claim.

2. Habitual offender notice

Petitioner contends that respondent Unknown Asst. Prosecutor filed a “Habitual Offender 4th Information” against him on April 15, 1985, without first providing notice as required by Michigan law. Mich. Comp. Laws § 769.13. He alleges also that respondent

County of Oakland had established a policy or practice of filing habitual offender “informations” against defendants. As with petitioner’s allegations concerning the magistrate’s return, these allegations suggest at most a violation of Michigan law or procedure. Nothing in his allegations suggests that any rights protected by federal law or the federal Constitution were violated. Petitioner will be denied leave to proceed on this claim.

B. Claims Barred by Heck

In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that individuals may not proceed under civil rights statutes such as § 1983 if they are asserting claims for money damages that, if successful, would necessarily imply the invalidity of an outstanding criminal conviction or sentence that remains valid at the time the § 1983 action is filed. To recover damages for an allegedly unconstitutional conviction or sentence, “a § 1983 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.” Id. at 486-87. The claims that are barred by Heck will be dismissed without prejudice. Petitioner may raise them only after the sentence or conviction he challenges is no longer in place.

1. Conspiracy to convict

In paragraph 8 of his complaint, petitioner alleges that “respondents” conspired to convict him of breaking and entering. He alleges that he pleaded guilty to the charge on September 30, 1985, received a sentence of four to twenty years’ imprisonment and spent the next twelve years incarcerated or on parole. He contends that he was conspired against “for reason of his minority status together with allegation of criminal involvement in another matter dismissed originating in the city of Oak Park, Michigan.” Cpt., dkt. #3, ¶ 8. These allegations are insufficient to state a conspiracy claim under either § 1983 or § 1985(3).

First, petitioner has not satisfied one of the pleading requirements because he has not identified by name any member of this alleged conspiracy. It is impossible to discern from petitioner’s allegations which specific individuals he believes conspired against him. Second, even if petitioner had met the pleading requirements for a conspiracy claim, the claim would be barred because it amounts to a challenge to the validity of his conviction. Petitioner does not contend that his conviction has been invalidated and his allegation that the conviction was used as a sentence enhancer in a later proceeding suggests that it has not been invalidated. He appears to argue that his conviction was obtained unlawfully because the prosecutor did not follow several provisions of state law in the early stages of the case. A judgment in petitioner’s favor on this claim would imply that his conviction was obtained illegally. Therefore, the rule announced in Heck bars this claim. Abella v. Rubino, 63 F.3d 1063, 1065 (11th Cir. 1995) (conspiracy to convict claim barred by Heck); Hazel v. Reno,

20 F. Supp. 2d 21, 24 (D.D.C. 1998) (denying prisoner leave to proceed on conspiracy claim barred by Heck). Petitioner will be denied leave to proceed on this claim.

2. Unlawful sentence

In paragraph 10 of his complaint, petitioner alleges that respondent Unknown Oakland Circuit Judge violated his rights under the due process and equal protection clauses of the Fourteenth Amendment and his Eighth Amendment protection against cruel and unusual punishment by imposing a sentence in the absence of “procedural jurisdiction.” Petitioner will be denied leave to proceed on this claim because it is barred by Heck. As with petitioner’s conspiracy to convict claim, a finding that the judge lacked jurisdiction to sentence petitioner would necessarily imply the invalidity of his conviction.

Even if petitioner’s claim were not barred, petitioner would be denied leave to proceed on this claim because it is barred by the doctrine of absolute immunity. Few doctrines are more solidly established at common law than the absolute immunity of judges from liability for their judicial acts, even when they act maliciously or corruptly. Mireles v. Waco, 502 U.S. 9, 11 (1991). This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants. Pierson v. Ray, 386 U.S. 547, 554 (1967). This doctrine bars petitioner’s claim for money damages against

respondent Unknown Oakland Circuit Judge. Petitioner will be denied leave to proceed on this claim.

3. Use of Michigan conviction as sentence enhancer

Petitioner alleges that respondents Salter and Hennepin County District Attorney's Office violated his rights by using the Michigan conviction as a sentence enhancer in an unrelated 2004 case against petitioner in Hennepin County, Minnesota. He alleges that respondents failed to investigate the validity of that conviction before presenting it as a potential sentence enhancer. Also, he alleges that respondent Nord, the judge who sentenced him in the Minnesota case, violated his rights by relying on the Michigan case in sentencing him to a suspended sentence of 14 months' imprisonment.

Petitioner alleged also that he is appealing his sentence in the Minnesota court of appeals. He has not alleged that his sentence has been reversed, expunged, or called into question by the grant of a petition for habeas corpus. Therefore, his claims against respondents Salter, Nord and Hennepin County District Attorney's Office are barred by Heck. Petitioner will be denied leave to proceed on this claim.

C. Conspiracy Between Officials in Michigan and Minnesota

Petitioner makes a vague allegation that hints of a conspiracy among the respondents

in paragraph 15 of his complaint. In that paragraph, he alleges that respondents

did knowingly, willfully, maliciously and conspiratorily executed aforesaid planned abuses of legal process through consistent private party, police, administrative and judicial assaults, systematically, against Plaintiff to unlawfully deprive him of liberty, in denials of his civil rights, based upon a class of persons, whom yet and still hold personal verifiable vendetta against him prior to 1985, for reasons of political activism affecting the county of Oakland.

Plaintiff's pleadings in this case and his pleadings in two other cases in this court make it clear that petitioner believes that he has been wronged by state officials in Michigan and Minnesota. However, to state a claim for conspiracy under § 1983 or § 1985(3), a petitioner must describe the parameters of the alleged conspiracy in minimal detail so that the members of the conspiracy have sufficient notice of the charge against them.. In this case, petitioner has named only two individuals by name (respondents Salter and Nord). It is evident, however, that petitioner believes that more than these two individuals are involved in the conspiracy. By failing to name those other individuals, petitioner has not given the court or respondents Salter and Nord notice of those he believes are part of the conspiracy against him.

In addition, petitioner has not provided an approximate date for this alleged conspiracy. His failure to do so may be explained by the fact that petitioner believes the actions of the prosecutors and judges in Minnesota and Michigan are connected to a larger conspiracy against him that predates the events detailed in the complaint in this case. That

fact does not relieve him of his obligation to indicate approximately when the respondents in this case allegedly conspired against him. Petitioner's failure to provide a date is all the more critical because almost twenty years separates petitioner's conviction in Michigan and the use of that conviction in Minnesota and his allegations do not suggest that respondents Salter or Nord or anyone employed by respondent Hennepin County District Attorney's Office knew or contacted any of the respondents in Michigan before petitioner's Michigan conviction was considered at his sentencing in Minnesota.

Finally, petitioner appears to suggest that the purpose of the alleged conspiracy was to deny him due process. He appears to believe that the respondents in Minnesota abused his right to fair process by relying on his Michigan conviction in his Minnesota sentencing proceeding. When an individual is sentenced by a court, the prosecutor in this case has an obligation to inform the judge of the individual's prior convictions. So long as a prior conviction has not been expunged, reversed by an appellate court or called into question in another way, it is entirely appropriate for the prosecutor to inform the court of that conviction and for the court to consider that conviction in sentencing the individual. Petitioner's allegations do not suggest that respondents conspired to deprive him of his rights under the due process clause or any other constitutional provision.

For these reasons, petitioner will be denied leave to proceed on his conspiracy claim against respondents under § 1983 and § 1985(3).

D. Failure to Train or Supervise

Petitioner alleges that the violations of his rights were the result of the failure of respondents County of Oakland and County of Hennepin to properly train or supervise their employees. Because I have determined that no federal rights of petitioner were violated, I will deny him leave to proceed on his failure to train and supervise claims as well.

ORDER

IT IS ORDERED that

1. Petitioner Dwayne W. O'Neal's request for leave to proceed in forma pauperis is DENIED with respect to his claims that (1) respondents Unknown Asst. Prosecutor and County of Oakland lacked "procedural jurisdiction" to pursue legal proceedings against him because they arraigned him before the magistrate's return was filed and (2) respondent Unknown Asst. Prosecutor filed a "Habitual Offender 4th Information" against him on April 15, 1985, without first providing notice as required by Michigan law. These claims are DISMISSED without prejudice.

2. Petitioner's request for leave to proceed in forma pauperis is DENIED with respect to the following claims, which are barred under Heck v. Humphrey, 512 U.S. 477 (1994) and DISMISSED without prejudice:

a. Respondents conspired to convict him of breaking and entering;

b. Respondent Unknown Oakland Circuit Judge violated his rights under the due process and equal protection clauses of the Fourteenth Amendment and his Eighth Amendment protection against cruel and unusual punishment by imposing a sentence in the absence of “procedural jurisdiction”; and

c. Respondents Salter and Hennepin County District Attorney’s Office violated his rights by using the Michigan conviction as a sentence enhancer in an unrelated 2004 case against petitioner in Hennepin County, Minnesota.

3. Petitioner’s request for leave to proceed in forma pauperis is DENIED with respect to his claims that (1) the respondents in Michigan and Minnesota conspired to deprive him of his rights under the due process clause and (2) respondents County of Oakland and County of Hennepin failed to properly train their employees. These claims are DISMISSED with prejudice because they fail to state claims for which relief may be granted.

4. The clerk of court is directed to close the file.

Entered this 13th day of March, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge