

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DANIEL PASKINS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 02-444-SLR  
 )  
 THOMAS CARROLL, M. JANE BRADY, )  
 DELAWARE STATE POLICE, THE )  
 LAW OFFICE OF EDWARD GILL, and )  
 DENNIS REARDON, ESQUIRE, )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Daniel Paskins, a pro se litigant, filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (D.I. 2) The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

**II. STANDARD OF REVIEW**

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. The court granted plaintiff leave to proceed in forma pauperis on June 7, 2002 and ordered him to pay \$13.35 as an initial partial filing fee within thirty days.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary

relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).<sup>1</sup> If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in

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<sup>1</sup> These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).<sup>2</sup> As discussed below, plaintiffs's claims have no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

### **III. DISCUSSION**

Plaintiff alleges numerous problems related to his conviction and incarceration in 1993. (D.I. 2) He contends the legal representation provided by defendants Reardon and The Law Offices of Edward Gill was deficient and that members of defendant State Police wrote false and improper charges against him. He claims defendant Brady denied him a grand jury hearing and failed to inform him of formal charges against him. As a result of these actions, plaintiff asserts defendant Carroll has illegally imprisoned him. Plaintiff requests that the court

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<sup>2</sup> Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915(e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

award him compensatory damages at the rate of \$2,500 a day as well as punitive damages. (Id. at 4)

Plaintiff is essentially attacking his conviction. However, plaintiff's sole federal remedy challenging the fact or duration of his confinement is by way of habeas corpus. Preiser v. Rodriquez, 411 U.S. 475 (1973). A plaintiff cannot recover damages under § 1983 for alleged false imprisonment unless he proves 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. Heck v. Humphrey, 512 U.S. 477, 487 (1994). Plaintiff has not alleged that his conviction or sentence was reversed or invalidated by any means required under Heck and, therefore, his claims lack an arguable basis in law or in fact. Accordingly, the court finds that plaintiff's claims against defendants Carroll, Brady and the Delaware State Police are frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1) and shall be dismissed.

Plaintiff's allegations against his attorneys likewise are meritless. Under § 1983 a plaintiff must demonstrate that the person who deprived him of a constitutional right was "acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)).

(overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). Public defenders do not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in criminal proceedings. Polk County v. Dodson, 454 U.S. 312 (1981). Furthermore, public defenders are entitled to absolute immunity from civil liability under 42 U.S.C. § 1983. Black v. Bayer, 672 F.2d 309 (3d Cir. 1982). Because defendants Reardon and The Law Offices of Edward Gill have not acted under color of state law and are immune from liability under 42 U.S.C. § 1983, plaintiff's claims against them lack an arguable basis in law or in fact. Accordingly, the court finds that plaintiff's assertions against these defendants are frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1) and shall be dismissed.<sup>3</sup>

#### **IV. CONCLUSION**

At Wilmington, this 25th day of July, 2003, for the reasons stated:

IT IS ORDERED that:

1. Plaintiff's complaint is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

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<sup>3</sup>Plaintiff's motions to amend (D.I. 6, 7) to include Judge T. Henley Graves and the Supreme Court of Delaware are denied as moot and, alternatively, are without merit under Mireles v. Waco, 502 U.S. 9, 11 (1991) (judges are generally immune from a suit for money damages) and §§ 1915(e)(2)(B) - 1915A(b)(1).

2. Plaintiff's motions to amend are denied as moot. (D.I. 6, 7)

3. Plaintiff shall not be required to pay any remaining balance on the \$150.00 filing fee.

Sue L. Robinson  
United States District Judge