

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANTHONY MORRIS,)
)
 Plaintiff,)
)
 v.) Civil Action No. 04-52-SLR
)
 RODNEY LAYFIELD, JOHN MCCOLGAN,)
 MONROE HUDSON, and MARK DAWSON,)
)
 Defendants.)

MEMORANDUM ORDER

Plaintiff, Anthony Morris, SBI #300363, is a pro se litigant who is presently incarcerated at the Sussex Correctional Institution located in Georgetown, Delaware. Plaintiff 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.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. When reviewing pauper applications, the court must make two separate determinations. First, the court must determine whether plaintiff is eligible for pauper status pursuant to 28 U.S.C. § 1915. On February 9, 2004, the court granted plaintiff's request to proceed in forma pauperis, assessed \$8.00 as an initial partial filing fee, and ordered him to file an authorization form within thirty days or the case would be dismissed. Plaintiff filed the authorization form on

February 13, 2004.

Second, the court must "screen" the complaint to determine whether it 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). The United States Supreme Court has held that 28 U.S.C. § 1915(e) (2) (B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e) (2) (B) if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989).¹

When reviewing complaints pursuant to 28 U.S.C. § 1915(e) (2) (B), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b) (6). Neal v. Pennsylvania Bd. of Prob. & 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). Under this standard, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v.

¹ Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act ("PLRA"). Section 1915 (e) (2) (B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

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 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)).

As discussed below, plaintiff's § 1983 claim against the defendants has 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).

II. DISCUSSION

Plaintiff alleges that the defendants - Rodney Layfield, John McColgan, Monroe Hudson and Mark Dawson - arrested him on May 28, 2002. (D.I. 2 at 3) Plaintiff also appears to be alleging that, during his trial, defendants lied regarding the circumstances of plaintiff's arrest. (Id. at 5) Plaintiff requests a reversal of his conviction, as well as compensatory damages for his "illegal" incarceration. (D.I. 2 at 4) On March 23, 2004, plaintiff also filed a motion for appointment of counsel. (D.I. 6) Because the court finds that plaintiff's complaint is frivolous, his motion for appointment of counsel is denied as moot.

Plaintiff is, in essence, challenging the fact of his

conviction or duration of sentence. His sole federal remedy for challenging the fact of his conviction or duration of his sentence is by way of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475 (1973). Furthermore, a plaintiff cannot recover under § 1983 for alleged wrongful incarceration 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 a determination, or called into question by a federal court's issuance of a writ of habeas corpus. See Heck v. Humphrey, 512 U.S. 477, 487 (1994). Here, plaintiff has not alleged, let alone proved, that his conviction or sentence was reversed or invalidated as provided by Heck. Consequently, his current claim for damages rests on an "inarguable legal conclusion" and is, therefore, frivolous. See Neitzke, 490 U.S. at 326. The court shall dismiss the complaint without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, at Wilmington this 22nd day of June, 2004, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for appointment of counsel (D.I. 6) is denied.
2. Plaintiff's complaint is frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1) and is dismissed without prejudice.
3. Plaintiff is not required to pay any remaining balance

of the \$150.00 filing fee.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE