

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLEN P. LUCKETT,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-323-KAJ
)
 SANDRA DEAN,)
)
 Defendant.)

MEMORANDUM ORDER

Plaintiff Allen P. Lockett ("Lockett"), SBI #274704, is a pro se litigant who was incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware at the time he filed this complaint. Lockett 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.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the Court must determine whether the Lockett is eligible for pauper status. The Court granted Lockett leave to proceed in forma pauperis on April 11, 2003. On April 29, 2003, the Court determined that Lockett had no assets with which to pay an initial partial filing fee and ordered him to file an authorization form within thirty days. On June 20, 2003, the Court dismissed Lockett's complaint without prejudice for failure to

file the authorization form. On June 30, 2003, Lockett filed a motion for reconsideration and a notice of appeal. Lockett filed the authorization form on July 8, 2003.¹

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).² If the Court finds Lockett'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 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). 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

¹ The United States Court of Appeals for the Third Circuit dismissed the appeal on January 14, 2004. I granted Lockett's motion for reconsideration on March 3, 2004.

² 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).

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)).

The United States Supreme Court has held that § 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." Neitzke v. Williams, 490 U.S. 319, 325 (1989).³ Consequently, a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact." Id. As discussed below, Lockett's claim 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).

Lockett alleges that defendant Sandra Dean ("Dean"), an assistant public defender, violated his right to effective assistance of counsel under the Sixth Amendment by lying to him and convincing him to drop an appeal. (D.I. 2 at 3; D.I. 14; D.I. 15 at 3) Lockett requests that the Court award him compensatory damages in the amount of \$1500 a day for each day he spent in confinement. (D.I. 2 at 4; D.I. 15 at 4)

Section 1983 requires the plaintiff to show 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

³Neitzke 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 frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

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 Dean has not acted under color of state law and is immune from liability under 42 U.S.C. § 1983, Lockett's claim against her lacks an arguable basis in law or in fact. Therefore, the Court finds that Lockett's claim against Dean is frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 4th day of June, 2004, that:

1. Lockett's complaint is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).
2. The clerk shall cause a copy of this Memorandum Order to be mailed to Lockett.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware