



**Farnan, District Judge**

**MEMORANDUM ORDER**

Plaintiff Vincent Allen, is a pro se litigant who is presently incarcerated at the Central Violation of Probation Center ("CVPC") in Smyrna, Delaware. His SBI number is 116796. Plaintiff has filed this action pursuant to 42 U.S.C. § 1983 and has 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. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, the Court must determine whether Plaintiff is eligible for pauper status. On July 1, 2003, the Court granted Plaintiff leave to proceed in forma pauperis, assessed \$2.67 as an initial partial filing fee, and ordered him to file an authorization form within thirty days from the date the order was sent. Plaintiff filed the authorization form on July 15, 2003.

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 Plaintiff's complaint falls under any 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 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.

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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 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).

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, Plaintiff'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).

## **II. DISCUSSION**

### **A. The Complaint**

Plaintiff filed this Complaint on June 10, 2003. (D.I. 2) In the caption of the complaint, Plaintiff names the following defendants: Kathleen D. Feldman ("Feldman"), Prothonotary, Public Defender Office, Lawrence L. Levinson ("Levinson"), Timothy Barron ("Barron"), James A. Rambo ("Rambo"), and the Delaware Public Archives. However, in the body of the Complaint Plaintiff refers to the following two individuals as additional defendants: Judge Albert J. Stiffell ("Judge Stiffell") and an unnamed Court Reporter. Plaintiff alleges that the Defendants have violated his rights under the First, Fifth, Sixth and Fourteenth

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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).

Amendments because he has been unable to obtain transcripts of his habitual offender hearing. (D.I. 2)<sup>3</sup> Plaintiff's claims, as set out in his complaint are difficult to follow. Rather than set out the claims in the order Plaintiff has presented them, the Court will set out the claims in more logical order.

First, Plaintiff alleges that Judge Stiffel violated Plaintiff's constitutional rights by failing to order him an official transcript of the habitual offender hearing held on July 25, 1984. Plaintiff further alleges that Judge Stiffel violated his constitutional rights by considering convictions which had been dismissed, when Judge Stiffel determined that Plaintiff was, an habitual offender. (D.I. 2 at 3-d to 3-e)

Second, Plaintiff alleges that Barron violated his constitutional rights by intentionally introducing false evidence against Plaintiff at the habitual offender hearing. (Id. at 3-g) Specifically, Plaintiff alleges that Barron introduced evidence that Nancy Perrillo represented Plaintiff at earlier plea and/or

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<sup>3</sup> It is appears from the complaint that Plaintiff is confused about the date of the habitual offender hearing. First, Plaintiff alleges that Judge Stiffel signed an order declaring Plaintiff an habitual offender on July 15, 1984. (D.I. 2 at 3) Next, Plaintiff alleges that the habitual offender hearing took place on August 10, 1984. (Id. at 3-A) However, elsewhere in the Complaint, Plaintiff alleges that the habitual offender hearing took place on August 8, 1984. (Id. at 3-e) On July 25, 1984, the Superior Court declared Plaintiff an habitual offender. On August 10, 1984, the Superior Court sentenced Plaintiff to fifteen years incarcerations. See State v. Allen, 2002 WL 31814750 (Del. Super. Nov. 4, 2002).

trial proceedings which were used to declare Plaintiff an habitual offender. (Id.)

Third, Plaintiff alleges that Rambo and Levinson violated his constitutional rights under the Sixth Amendment by failing to object to the evidence offered by Rambo, and by failing to properly perfect an appeal. (Id. at 3g-h; 3-e) Fourth, Plaintiff alleges that the unnamed Court Reporter violated his constitutional rights under the First, Fifth, Sixth and Fourteenth Amendments by failing to produce a transcript of the habitual offender hearing held on August 8, 1984, "as ordered by the Court on November 26, 1984." (Id. at 3-e)

Fifth, Plaintiff alleges that Feldman has violated his constitutional rights under the First, Fifth, Sixth, and Fourteenth Amendments by "losing or not being able to locate the transcripts at issue." (Id. at 3-g) Sixth, Plaintiff alleges that the Superior Court Prothonotary has violated his constitutional rights under the First, Fifth, Sixth, and Fourteenth Amendments by failing to locate the transcripts. (Id. at 3-h) Plaintiff states that he is suing the Prothonotary in her official capacity only. (Id.)

Seventh, Plaintiff alleges that the Office of the Public Defender has violated his constitutional rights under the First, Fifth, Sixth and Fourteenth Amendments by failing to locate the transcripts. (Id. at 3-l) Finally, Plaintiff alleges that the

Delaware Public Archive has also violated his constitutional rights under the First, Fifth and Fourteenth Amendments by failing to locate the transcripts. (Id.)

Plaintiff requests compensatory damages in the amount of \$1,000,000. He further requests punitive damages in the amount of \$600,000 and special damages in the amount of \$600,000. Plaintiff also requests that the Court issue a declaratory judgment and "expunge his criminal judgment of conviction of habitual offender..." (Id. at 5)

## **B. Analysis**

### **1. Plaintiff's Habeas Claim**

To the extent that Plaintiff is trying to challenge his conviction and/or sentence, his sole federal remedy for challenging the fact or duration of his confinement is by way of habeas corpus. 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 determination, or called into question by a federal court's issuance of a writ of habeas corpus. See Heck v. Humphrey, 312 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. While Plaintiff has

filed at least six other civil rights actions in this Court since 1986, Plaintiff has never filed a petition for writ of habeas corpus challenging his conviction.<sup>4</sup> Consequently, to the extent Plaintiff is seeking damages for his current incarceration his claim rests on an "inarguable legal conclusion" and is, therefore, frivolous. See Neitzke, 490 U.S. at 326.

Furthermore, Plaintiff's argument that he required a transcript of the habitual offender hearing in order to pursue any appeal or federal habeas action is unavailing. First, Plaintiff filed a direct appeal of his conviction which was denied. See Allen v. State, 497 A.2d 783 (Del. Supr. Apr. 8, 1985) (Table No. 250 1985). Second, there is absolutely no requirement that a federal habeas petitioner file a copy of transcripts, when presenting a petition for writ of habeas corpus.

## **2. Absolute Immunity**

### **a. Plaintiff's Claim Against Judge Stiffel**

To the extent that Plaintiff is trying to raise a civil rights claim against Judge Stiffel, his claim must fail. The United States Supreme Court has held that judges are absolutely

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<sup>4</sup> Allen v. Brasure, CA No. 91-442-LON (dismissed March 26, 1993); Allen v. Borga, CA No. 91-485-LON (dismissed March 26, 1993); Allen v. Watson, CA No. 91-650-JJF (dismissed December 28, 1992); Allen v. Taylor, CA No. 91-505-JLL (dismissed March 11, 1992); Allen v. Walker, CA No. 93-001-JJF (dismissed March 24, 1993); Allen v. Carr, CA No. 96-153-LON (dismissed October 22, 1996).

immune from suits for monetary damages and such immunity cannot be overcome by allegations of bad faith or malice. Mireles v. Waco, 502 U.S. 9, 11 (1991). Furthermore, judicial immunity can only be overcome if the judge has acted outside the scope of her judicial capacity or in the "complete absence of all jurisdiction." Id. at 11-12. Here, Plaintiff alleges that Judge Stiffel failed to provide him with transcripts of the habitual offender hearing and considered evidence that had been dismissed when Judge Stiffel determined Plaintiff was an habitual offender. (D.I. 2 at 3d-3e)<sup>5</sup> Nothing in Plaintiff's complaint indicates that Judge Stiffel was acting outside the scope of his judicial capacity, or in the absence of all jurisdiction. Mireles, 502 U.S. at 11. Consequently, Judge Stiffel is immune from suit for monetary liability under 42 U.S.C. § 1983 and Plaintiff's claim lacks an arguable basis in law or in fact.

**b. Plaintiff's Malicious Prosecution Claim**

Plaintiff alleges that Barron violated his constitutional rights under the First, Fifth, Sixth and Fourteenth Amendments by introducing false evidence against him. (D.I. 2 at 3g) The United States Supreme Court has held that prosecutors are

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<sup>5</sup> Although Plaintiff alleges that Judge Stiffel didn't provide him with transcripts, it appears that in September 1984, the Superior Court granted Plaintiff's motion for a copy of the transcript of the habitual offender hearing. See Allen v. State, 841 A.2d 307, n7 (Del. Supr. 2004). Consequently, there is no basis for Plaintiff's claim against the unnamed Court Reporter or Feldman.

absolutely immune from suits for monetary damages "in initiating a prosecution and in presenting the State's case." Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Furthermore, such immunity can not be overcome by allegations of malice. Id. at 427. Consequently, Barron is immune from suit for monetary liability under 42 U.S.C. § 1983 for the allegations Plaintiff sets forth. Plaintiff's malicious prosecution claim against Barron has no arguable basis in law or in fact. Therefore, Court finds that Plaintiff's malicious prosecution claim against Barron is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

**c. Plaintiff's Claims Against Rambo and Levinson**

Although Plaintiff casts his claims against Rambo and Levinson in terms of the due process and access to the courts, he is clearly raising a Sixth Amendment ineffective assistance of counsel claim against both Defendants. Section 1983 requires a 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 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 Rambo and Levinson have not acted under color of state law and are immune from liability under 42 U.S.C. § 1983, Plaintiff's claims lack an arguable basis in law or in fact. Therefore, the Court finds that Plaintiff's ineffective assistance of counsel claims against Rambo and Levinson are frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

### **3. Eleventh Amendment and Sovereign Immunity**

Plaintiff's claims against the Public Defender Office, the Delaware Public Archives and the Prothonotary, Superior Court must also fail. The Office of the Public Defender is an agency of the State of Delaware, created by the General Assembly to represent indigent defendants in criminal cases. 29 DEL. c. § 4602. The Delaware Public Archive is also an agency of the State of Delaware, created by the General Assembly to "ensure presentation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government." 29 Del. C. Sec. 501(a). By naming the Office of the Public Defender and the Delaware Public Archives, Plaintiff is actually naming the State of Delaware as a defendant in this action. To state a claim under 42 U.S.C. § 1983, Plaintiff must allege "the violation of a right secured by

the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person 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 not relevant here by, Daniels v. Williams, 474 U.S. 327, 330-31 (1986))).

"[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Ospina v. Department of Corrections, State of Delaware, 749 F.Supp. 572, 577 (D. Del. 1991) (citing Wills v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989)). Furthermore, "[a]bsent a state's consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant." Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam)). The State of Delaware has not waived its sovereign immunity under the Eleventh Amendment. See Ospina v. Department of Corrections, 749 F.Supp. at 579. Consequently, Plaintiff's claims against the Public Defenders's Office, the Delaware Public Archives and the Superior Court Prothonotary have no arguable basis in law or in fact. Therefore, Plaintiff's claim against the Public Defender's Office, the Delaware Public Archives and the Superior court Prothonotary is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

### **III. CONCLUSION**

Therefore, to the extent that Plaintiff is challenging the fact or duration of his conviction and sentence, the Court finds that his claim is frivolous in accordance with the provisions of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), and shall be dismissed without prejudice. Plaintiff's claim against Judge Stiffel is also deemed frivolous, and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). Furthermore, Plaintiff's malicious prosecution claim against Barron is also frivolous, and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). Plaintiff's ineffective assistance of counsel claims against Rambo and Levinson are also deemed frivolous, and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). Moreover, Plaintiff's claims against the Office of the Public Defender, the Delaware Public Archives, and the Prothonotary, Superior Court is also deemed frivolous, and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). An appropriate order shall be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

VINCENT ALLEN, :  
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 Plaintiff, :  
 :  
 v. : Civil Action No. 03-555-JJF  
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 KATHLEEN D. FELDMAN, :  
 PROTHONOTARY, PUBLIC DEFENDER :  
 OFFICE, JAMES RAMBO, TIMOTHY :  
 BARRON, and LAWRENCE LEVINSON, :  
 :  
 Defendants.

**ORDER**

At Wilmington this 2<sup>nd</sup> day of June, 2004, for the reasons set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that:

1. To the extent that Plaintiff is challenging the fact or duration of his conviction and sentence, his claim is frivolous pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1), and shall be DISMISSED without prejudice.

2. Plaintiff's claim against Judge Stiffel is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

3. Plaintiff's malicious prosecution claim against Barron is DISMISSED as frivolous, pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

4. Plaintiff's ineffective assistance of counsel

claims against Rambo and Levinson are DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

5. Plaintiff's claims against the Office of the Public Defender, the Delaware Public Archives, and the Superior Court Prothonotary are DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

6. The Clerk of the Court shall cause a copy of the court's Memorandum Opinion and this Order to be mailed to Plaintiff.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE