

\* False arrest / falsified warrants  
\* Malicious pros.  
failure to train / supervise

Decker v. Shasta County, Slip Copy (2017)  
2017 WL 3601382

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United States District Court, E.D. California.

Rodney R. DECKER, II, Plaintiff,  
v.  
SHASTA COUNTY, et al., Defendants.

No. 2:16-cv-179 KJN P  
Signed 08/22/2017

Attorneys and Law Firms

Rodney R. Decker, II, Redding, CA, pro se.

ORDER

KENDALL J. NEWMAN, UNITED STATES  
MAGISTRATE JUDGE

\*1 Plaintiff is an inmate at the Shasta County Jail, proceeding without counsel, and consented to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c). This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. He submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(e). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at 1227.

Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific facts are not necessary; the statement [of facts] need only give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Erickson v. Pregits, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question. Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes,

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416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

\*2 In his first claim, plaintiff alleges that his due process rights were violated because he was punished twice for the same offense, violating his right against double jeopardy, but he identifies the issue as "malicious prosecution." (ECF No. 1 at 3.) Plaintiff recounts that his probation was revoked, and he served time on the parole revocation, but following his subsequent release, was violated for drugs and new charges were brought alleging second degree burglary, and escape, based on his alleged failure to charge his ankle monitor, and felony theft of the ankle monitor, which plaintiff claims he returned in January. (ECF No. 1 at 3.) In his second claim, he alleges he was falsely arrested based on warrants for which he had already served his time. (ECF No. 1 at 4.) In his third claim, he alleges a violation of his equal protection rights based on defendant's "circumventing constitutional law." (ECF No. 1 at 5.) Plaintiff contends that defendants conspired together to violate plaintiff's constitutional rights. In addition, plaintiff alleges that defendants failed to properly train subordinates on how to properly do their jobs, and that their policies and customs deprived plaintiff of his due process rights and placed him in double jeopardy. (ECF No. 1 at 6.) Plaintiff names as defendants Shasta County, the Shasta County Probation Office, the Shasta County District Attorney's Office, and Sheriff Tom Bosenko. Plaintiff seeks unidentified equitable relief and monetary damages. (ECF No. 1 at 8.)

For the following reasons, plaintiff's complaint must be dismissed. However, plaintiff is granted leave to file an amended complaint if he can do so in good faith.

First, the District Attorney's Office employees are entitled to prosecutorial immunity concerning their actions in prosecuting plaintiff. Prosecutors are absolutely immune from suit for actions taken by them in performing the traditional functions of a prosecutor. Kalina v. Fleischer, 522 U.S. 118, 131 (1997).

Second, it is unclear whether criminal proceedings remain pending at this time. Plaintiff claims that he was facing additional new charges for burglary, escape and felony theft.

If criminal proceedings remain pending, it is premature for this court to review petitioner's collateral attack

on his conviction before the state court has had the opportunity to adjudicate the claims. See Younger v. Harris, 401 U.S. 37 (1971). Under Younger, federal courts may not enjoin pending state criminal proceedings except under extraordinary circumstances. Id. at 49, 53. Younger absention prevents a court from exercising jurisdiction when three criteria are met: 1) there are ongoing state judicial proceedings; 2) an important state interest is involved; and 3) there is an adequate opportunity to raise the federal question at issue in the state proceedings. H.C. ex rel. Gordon v. Koppel, 203 F.3d 610, 613 (9th Cir. 2000).

The instant complaint does not make clear whether criminal proceedings are pending or not. Thus, plaintiff is granted leave to amend to clarify his allegations and provide the status of the criminal proceedings.

Third, at least some of plaintiff's claims appear to be barred. When a state prisoner challenges the legality of his custody and the relief he seeks is a determination that he is entitled to an earlier or immediate release, such a challenge is not cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997). Thus, where a § 1983 action seeking monetary damages or declaratory relief alleges constitutional violations which would necessarily imply the invalidity of the prisoner's underlying conviction or sentence, such a claim is not cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 not cognizable because allegations were akin to malicious prosecution action which includes as an element a finding that the criminal proceeding was concluded in plaintiff's favor). Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that § 1983 claim not cognizable because allegations of procedural defects were an attempt to challenge substantive result in parole hearing). Here, plaintiff's claims involve his sentences obtained by a probation revocation. The substance of plaintiff's claims is an attack on the validity of his sentence such that it necessarily implies the invalidity of his continuing confinement. Thus, plaintiff's claims challenging the underlying criminal proceedings, including any attendant to related claims, such as those raised against the county, may not be

brought in a civil rights action until the sentence has been invalidated.

\*3 Fourth, plaintiff may be able to state a state law claim for false arrest based on his allegations that false statements were made in the arrest warrants. A cause of action for false arrest accrues on the arrest and is actionable immediately. There is no requirement that the arrestee allege favorable termination of the criminal proceedings. *Collins v. Owens*, 77 Cal.App.2d 713, 716 (1947). Here, however, plaintiff fails to allege sufficient facts to support such a claim, and has also failed to name individuals who actually arrested plaintiff or who allegedly falsified the arrest warrants. In addition, to the extent plaintiff maintains the probation officer was responsible, a state law false imprisonment claim would fail if the probation officer had probable cause to believe plaintiff had violated the terms of his probation. See *Ferrigno v. Fedco, Inc.*, 7 Cal. 4th 701, 716, 30 Cal. Rpt.2d 18 (1994); *Cal. Penal Code Section 1203.2*. Moreover, absent federal claims, this action cannot proceed solely on the basis of state law claims. Although the court may exercise supplemental jurisdiction of state law claims, a plaintiff must first have a cognizable claim for relief under federal law. See 28 U.S.C. § 1367. For all of these reasons, plaintiff's false arrest claims are also dismissed.

The court finds the allegations in plaintiff's complaint so vague and conclusory that it is unable to determine whether the current action is frivolous or fails to state a claim for relief. The court has determined that the complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Cmty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support plaintiff's claim. *Id.* Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights. *Rizzo v. Goode*, 423 U.S. 362.

Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also bear the docket number assigned to this case and must be labeled "Amended Complaint."

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371 (1976). Also, the complaint must allege in specific terms how each named defendant is involved. *Id.* There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. *Id.*; *May v. Emonolo*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. *Key v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This requirement exists because, as a general rule, an amended complaint supersedes the original complaint. See *Loux v. Rhyax*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Sheriff, Shasta County Jail, filed concurrently herewith.
3. Plaintiff's complaint is dismissed.
4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:

- \*4 a. The completed Notice of Amendment; and
- b. An original and one copy of the Amended Complaint.