**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| JOSE LUIS RODRIGUEZ, SR., Plaintiff, | : | |
| | : | PRISONER |
| v. | : | Case No. 3:04CV25 (MRK) |
| | : | |
| JOHN PATTERSON and | : | |
| THERESA A. FERRYMAN, | : | |
| Defendants. | : | |

**RULING AND ORDER**

Plaintiff Jose Luis Rodriguez, Sr. is an inmate currently confined at Corrigan-Radgowski Correctional Institution in Uncasville, Connecticut. He brings this civil rights action *pro se* pursuant to 28 U.S.C. § 1915. Mr. Rodriguez alleges that the Defendants John Patterson and Theresa Ferryman falsified affidavits submitted to obtain a warrant for his arrest. Defendants have filed a motion for judgment on the pleadings. For the reasons that follow, Defendants' motion is granted in part and denied in part.

The Rule 12(c) standard for judgment on the pleadings is essentially the same as that applied to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *See Burnette v. Carothers*, 192 F.3d 52, 56 (2d Cir. 1999). The Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Twombly v. Bell Atlantic Corp.*, 425 F.3d 99, 106 (2d Cir. 2005). Dismissal is inappropriate unless it appears "beyond doubt that [plaintiff] can prove no set of facts in support of [his] claim which would entitle [him] to relief." *See Davis v. Monroe County Bd. of*

*Educ.*, 526 U.S. 629, 654 (1999) (internal quotation marks omitted); *Shah v. Meeker*, 435 F.3d 244, 246 (2d Cir. 2006). "'[T]he office of a motion [for judgment on the pleadings] is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of New York*, 375 F.3d 168, 176 (2d Cir. 2004) (quoting *Geisler v. Petrocelli*, 616 F.2d 636, 639 (2d Cir. 1980)).

Mr. Rodriguez alleges that Defendants submitted false affidavits and evidence to obtain a warrant for his arrest on charges of sexual assault in the first degree, in violation of Conn. Gen. Stat. § 53a-7, and risk of injury to a minor, in violation of Conn. Gen. Stat. § 53-21. *See* Complaint [doc. #1] at 3 (alleging that Mr. Patterson "knowingly lied and misrepresented context in affidavits" when submitting the affidavits "prior to proceedings"); *id.* at 4 (accusing Ms. Ferryman of "fabricat[ing] evidence and or [sic] fil[ing] false criminal reports . . . with the purpose of deceiving a Superior Court Judge into finding probable cause to sign a warrant against plaintiff"). Whether Mr. Rodriguez intends to pursue his allegations as a false-arrest claim, a malicious-prosecution claim, or both, he must demonstrate that the relevant criminal proceedings have terminated in his favor. *See Roesch v. Otarola*, 980 F.2d 850, 853-54 (2d Cir. 1992) (holding that under Connecticut law, a false-arrest plaintiff must show that the charges terminated favorably)[1]; *Heussner v. Day, Berry and Howard, LLP*, 94 Conn. App. 569, 2006 WL 721611, at *3 (Mar. 28, 2006) ("To prevail on a claim of malicious prosecution, a plaintiff must prove that . . . the criminal proceedings have terminated in

[1] The Court notes that *Roesch*'s assessment of Connecticut false-arrest law has been questioned. *See, e.g.*, *Weyant v. Okst*, 101 F.3d 845, (2d Cir. 1996) (noting that "Connecticut law is less clearly settled" than New York law as to whether a favorable termination is required for a false-arrest claim); *Holman v. Cascio*, 390 F. Supp. 2d 120, 125-26 (D. Conn. 2005) (noting courts that have questioned *Roesch*'s holding). However, absent controlling authority to the contrary, the Court follows *Roesch*.

favor of the plaintiff . . . .").

When ruling on a motion for judgment on the pleadings, the court considers only the complaint, with any attached exhibits and matters of which judicial notice may be taken. *See Samuels v. Air Transport Local 504*, 992 F.2d 12, 15 (2d Cir. 1993). Federal Rule of Evidence 201(b) describes the type of fact that may be judicially noticed: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." A guilty plea is one such fact of which judicial notice may be taken. *See, e.g.*, *Davis v. Cotov*, 214 F. Supp. 2d 310, 315-16 (E.D.N.Y. 2002) (taking judicial notice of plaintiff's guilty plea); *Jamison v. Senkowski*, No. 99 CIV 9424, 2001 WL 246397, *7 (S.D.N.Y. Mar. 13, 2001) (taking judicial notice of a guilty plea); *cf. Schwartz v. Capital Liquidators, Inc.*, 984 F.2d 53, 54 (2d Cir.1993) (taking judicial notice of plaintiff's criminal conviction); *Cerasani v. Sony Corp.*, 991 F. Supp. 343, 353 (S.D.N.Y. 1998) ("[T]his Court can, and does, take judicial notice of [plaintiff's] criminal record."). Therefore, the Court takes judicial notice that Mr. Rodriguez pled guilty to two separate counts of risk of injury to a minor, in violation of Conn. Gen. Stat. § 52-21, in connection with the present dispute.

However, it is not possible to tell at this stage whether one, both, or neither of the pleas relates to Mr. Rodriguez's arrest for first-degree sexual assault, and it is conceivable that no charge related to the arrest was ever filed or that it was ultimately dropped. Therefore, Defendants may still face liability for false arrest or malicious prosecution in connection with that arrest. *See Fulton v. Robinson*, 289 F.3d 188, 197 (2d Cir. 2002) ("[A]n accused arrested on multiple charges but convicted on only one may proceed with a claim for malicious prosecution on the charge on which

he was not convicted . . . ."); *Pianka v. Manning*, No. Civ.3:01CV00153, 2005 WL 1421456, at *7 (D. Conn. May 26, 2005) (holding that "conviction on one charge does not protect [from a false-arrest claim] police officers who pile on additional charges without justification"). Therefore, while Mr. Rodriguez may not maintain his false-arrest or malicious-prosecution claims with respect to the arrest for risk of injury to a minor, which resulted in a guilty plea, his claims may go forward with respect to the first-degree sexual assault arrest. Defendants are free to renew their argument at the summary judgment stage and present evidence as to the disposition of the assault charge.

Accordingly, Defendants' motion for judgment on the pleadings [doc. #19] is GRANTED in part and DENIED in part. It is granted with respect to the false-arrest and malicious-prosecution claims relating to his arrest and prosecution for risk of injury to a minor. It is denied with respect to the claims relating to his arrest and prosecution for first-degree sexual assault. The dates for completion of discovery and filing dispositive motions have long passed. If Defendants intend to file a motion for summary judgment, they should do so **by April 25, 2006**.

IT IS SO ORDERED,

/s/ Mark R. Kravitz
United States District Judge

**Dated at New Haven, Connecticut: April 5, 2006.**