

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANTHONY TORRES :
 :
 v. : PRISONER
 : Case No. 3:02cv2233 (SRU)
 :
 JOHN J. ARMSTRONG, et al. :

RULING AND ORDER

Plaintiff Anthony Torres (“Torres”), an inmate confined at the Northern Correctional Institution in Somers, Connecticut, brings this civil rights action pursuant to 28 U.S.C. § 1915. He names as defendants Commissioner John J. Armstrong and Deputy Commissioner Jack Tokarz in their official capacities and attorneys Sydney T. Schulman, Jane Starkowski and Kenneth J. Speyer in their individual capacities. Torres alleges that these defendants have deprived him of his constitutional right of access to the courts and seeks an injunction directing the defendants to provide him legal assistance in his state court case. For the reasons that follow, the complaint is dismissed..

I. Standard of Review

Section 1915 requires the court to conduct an initial screening of complaints filed by prisoners to ensure that the case goes forward only if it meets certain requirements. “[T]he court shall dismiss the case at any time if the court determines that ... the action ... is frivolous or malicious; ... fails to state a claim on which relief may be granted; or ... seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i) - (iii).

An action is “frivolous” when either: (1) “the ‘factual contentions are clearly baseless,’ such as when allegations are the product of delusion or fantasy;” or (2) “the claim is ‘based on an indisputably meritless legal theory.’” Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989)). A claim is based on an “indisputably meritless legal theory” when either the claim lacks an arguable basis in law, Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995).

Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998). The court construes pro se complaints liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Thus, if a prisoner “raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under section 1915(e)(2)(B)(i) even if the complaint fails to ‘flesh out all the required details.’” Livingston, 141 F.3d at 437 (quoting Benitez, 907 F.2d at 1295).

In order to state a claim for relief under section 1983 of the Civil Rights Act, Torres must satisfy a two-part test. First, Torres must allege facts demonstrating that each defendant acted under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

II. Facts

Torres alleges the following facts in his complaint. Defendants Commissioner Armstrong and Deputy Commissioner Tokarz are officials with the Connecticut Department of Correction (“DOC”). They are required by state statute to provide legal assistance in civil matters for indigent inmates. Defendant Schulman is under contract to provide the required legal assistance through the Inmates’

Legal Assistance Program (“ILAP”). Defendant Starkowski is the managing attorney at ILAP and defendant Speyer is a staff attorney at ILAP.

On January 28, 2002, Torres filed a petition for writ of habeas corpus in state court challenging his conditions of confinement. On September 26, 2002, Torres wrote to ILAP requesting assistance in preparing a pre-trial brief. ILAP reviewed the papers provided by Torres and determined that his petition failed to set forth a prima facie case. Thus, by letter dated October 2, 2002, ILAP declined assistance. Torres disagreed with that determination.

On October 8, 2002, Torres submitted an emergency grievance in which he demanded that DOC enforce the contract with ILAP and required ILAP to provide legal assistance with his state court habeas action. Torres states both that he received no response from the defendants and that the grievance procedures were completely exhausted by October 31, 2002.

On October 10, 2002, Torres sought a ninety-day postponement of his trial. The postponement was granted and the habeas trial was rescheduled from October 29, 2002, until January 27, 2003. Torres does not have access to a law library at Northern Correctional Institution.

III. Discussion

Torres alleges that defendants Schulman, Starkowski and Speyer are private citizens who were acting under color of state law because they were acting pursuant to the contract with DOC. For purposes of this ruling only, the court will assume that defendants Schulman, Starkowski and Speyer were acting under color of state law.

In Lewis v. Casey, 518 U.S. 343 (1996), the Supreme Court clarified what is encompassed in an inmate’s right of access to the courts and what constitutes standing to bring a claim for the violation

of that right. The Court held that, to show that the defendants violated his right of access to the courts, an inmate must allege facts demonstrating an actual injury stemming from the defendants' unconstitutional conduct. See id. at 349. As illustration, the Court noted that if an inmate were able to show that, as a result of the defendant's action, he was unable to file an initial complaint or petition, or that the complaint he filed was so technically deficient that it was dismissed without a consideration of the merits of the claim, he could state a claim for denial of access to the courts. See id. at 351. The Court, however, specifically disclaimed any requirement that prison officials ensure that inmates have sufficient resources to discover grievances or litigate effectively once their claims are brought before the court. See id. at 355.

Torres states that he filed his state habeas action and that the action has been scheduled for trial. His claim is that the denial of assistance from ILAP in filing his pre-trial memorandum will prevent him from litigating his claim effectively. Under Lewis, Torres has a constitutional right to assistance to enable him to file his action in a form that will not be dismissed without consideration of the merits of the claims. Torres did that on his own before he sought assistance from ILAP. The assistance sought was to facilitate the litigation of the action. Effective litigation is not a constitutionally protected right under Lewis. Thus, Torres has not alleged an actual injury as required to state a claim for denial of his constitutional right of access to the courts. All federal claims asserted in this action are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Torres also asserts a claim under state law that ILAP has violated the state contract with DOC. Supplemental or pendent jurisdiction is a matter of discretion, not of right. Thus, the court need not exercise supplemental jurisdiction in every case. See United Mine Workers v. Gibbs, 383 U.S. 715,

715-26 (1966). The federal court should exercise supplemental jurisdiction and hear a state claim when doing so would promote judicial economy, convenience and fairness to the litigants. The court should decline to exercise supplemental jurisdiction, however, when state law issues would predominate the litigation or the federal court would be required to interpret state law in the absence of state precedent. See id. at 726. In addition, the court may decline to exercise supplemental jurisdiction where the court has dismissed all claims over which it has original jurisdiction. See 28 U.S.C. § 1367(c)(3); Carnegie- Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988) (“in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine--judicial economy, convenience, fairness, and comity--will point toward declining to exercise jurisdiction over the remaining state-law claims”); Spear v. Town of West Hartford, 771 F. Supp. 521, 530 (D. Conn. 1991) (“absent unusual circumstances, the court would abuse its discretion were it to retain jurisdiction of the pendant state law claims on the basis of a federal question claim already disposed of”), aff’d, 954 F.2d 63 (2d Cir.), cert. denied, 506 U.S. 819 (1992). Because the court has dismissed Torres’ federal claims, the court declines to exercise supplemental jurisdiction over his state law claims.

IV. Conclusion

The complaint is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Torres may pursue any claims for violation of state law in the state courts. The Clerk is directed to enter judgment and close this case. Any appeal from this decision would not be taken in good faith .

SO ORDERED this _____ day of January 2003, at Bridgeport, Connecticut.

Stefan R. Underhill
United States District Judge