UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL MORIARTY	:	
	:	PRISONER
v.	:	Case No. 3:03cv285 (SRU)
	:	
WARDEN JOHN TARASCIO and	:	
WARDEN NELVIN LEVESTER	:	

RULING AND ORDER

Plaintiff Michael Moriarty ("Moriarty"), an inmate currently confined at the Wyatt Detention Facility in Central Falls, Rhode Island, brings this civil rights action pursuant to 28 U.S.C. § 1915. He names as defendants the wardens of the Bridgeport Correctional Center and the Hartford Correctional Center in their official capacities only. Moriarty alleges that he was not permitted to have a prison job while he was held in those state facilities during federal criminal proceedings. In addition, he alleges that he was not permitted to meet with other inmates to obtain legal assistance while at Hartford Correctional Center. He seeks an injunction that federal and state inmates be treated similarly. For the reasons that follow, the complaint must be 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).

II. Discussion

Moriarty states that he brings this action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). A Bivens action is the nonstatutory federal counterpart of a suit brought pursuant to 42 U.S.C. § 1983 and is aimed at federal rather than state officials. See Ellis v. Blum, 643 F.2d 68, 84 (2d Cir. 1981); Chin v. Bowen, 655 F. Supp. 1415, 1417 (S.D.N.Y.), aff'd, 833 F.2d 21, 24 (2d Cir. 1987) (citations omitted). Neither defendant in this action is a federal official; both are officials of the Connecticut Department of Correction. Thus, any Bivens claim must be dismissed. The court will construe this action as brought pursuant to 42 U.S.C. § 1983.

Moriarty seeks only injunctive relief in this action. The Second Circuit has held that a request for injunctive relief becomes moot if the inmate is transferred to a different correctional facility. See

Young v. Coughlin, 866 F.2d 567, 568 n.1 (2d Cir.), cert. denied, 492 U.S. 909 (1989) (because plaintiff had been transferred from the facility in which the alleged due process violations occurred his claims for declaratory and injunctive relief were moot); Beyah v. Coughlin, 789 F.2d 986, 988 (2d Cir. 1986) (plaintiffs' claims for declaratory and injunctive relief were moot in light of fact that plaintiff was no longer incarcerated in prison where allegedly unconstitutional deprivations occurred); Martin-Trigona v. Shiff, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed."); Mawhinney v. Henderson, 542 F.2d 1, 2 (2d Cir. 1976) (request for injunction or restraining order is moot where prisoner is no longer incarcerated at same institution).

Here, Moriarty was confined in the Wyatt Detention Facility at the time he filed this action. Because he is no longer confined in a correctional facility under the control of the Connecticut Department of Correction, his request for injunctive relief is moot. Injunctive relief is the only relief requested in the complaint. Thus, the complaint must be dismissed.

Although the courts have recognized an exception to the mootness doctrine where a claim, although moot, is "capable of repetition, yet evading review," this exception "applies only in exceptional situations where the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." Spencer v. Kemna, 523 U.S. 1, 17 (1998) (internal quotation marks and citations omitted). Here, Moriarty was confined in state correctional facilities during federal criminal proceedings. Those proceedings have now concluded. See United States v. Moriarty, 3:02cr91 (AHN). Thus, it is

unlikely that Moriarty will return to state custody in the near future. The court concludes that the exception to the mootness doctrine does not apply in this case.

III. Conclusion

The complaint is DISMISSED as moot pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). 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 March 2003, at Bridgeport, Connecticut.

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Stefan R. Underhill
United States District Judge