UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DANIEL CAMACHO	:	
	:	PRISONER
v.	:	CASE NO. 3:03CV1773 (SRU)
	:	
FAIRFIELD COUNTY, et al.	:	

RULING AND ORDER

The plaintiff, Daniel Camacho ("Camacho"), an inmate currently confined at the Bridgeport Correctional Center in Bridgeport, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He names as defendants Fairfield County, Assistant State's Attorney David R. Shannon, Public Defender Vicki H. Hutchinson, Chief Court Administrator of Danbury Court, Commissioner of Correction Theresa Lantz, Chief State's Attorney, Governor John Rowland, Chief Public Defender, Police Chief, Chief Bail Commissioner and/or executive director of the court support services division. Camacho alleges that the court acted as an advocate and "displayed hostility, skepticism and bias toward [his] case"; his public defender did not adequately protect his rights in a state criminal matter and prevented him from offering a defense; and the court, prosecutor and public defender conspired to deny him due process. For the reasons that follow, the complaint is dismissed without prejudice.

I. Standard of Review

Camacho has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to

proceed in forma pauperis in this action. When the court grants in forma pauperis status, section 1915 requires the court to conduct an initial screening of the complaint 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, "when an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 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). The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

A district court must also dismiss a complaint if it fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("court shall dismiss the case at any time if the court

determines that . . . (B) the action or appeal . . . (ii) fails to state a claim upon which relief may be granted"); Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000) ("Prison Litigation Reform Act . . . which redesignated § 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory"). In reviewing the complaint, the court "accept[s] as true all factual allegations in the complaint" and draws inferences from these allegations in the light most favorable to the plaintiff. Cruz, 202 F.3d at 596 (citing King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), is only appropriate 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.'" Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

A district court is also required to dismiss a complaint if the plaintiff seeks monetary damages from a defendant who is immune from suit. See 28 U.S.C. § 1915(e)(2)(B)(iii); Spencer v. Doe, 139 F.3d 107, 111 (2d Cir. 1998) (affirming dismissal pursuant to § 1915(e)(2)(B)(iii) of official capacity claims in § 1983 action because "the Eleventh Amendment immunizes state officials sued for damages in their official capacity").

II. Discussion

In order to state a claim for relief under section 1983 of the Civil Rights Act, Camacho must satisfy a two-part test. First, he must allege facts demonstrating that the defendants are persons acting

under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

A. Injunctive Relief

Camacho requests injunctive relief and damages from the defendants. Although he specifies the amount of damages sought, he does not describe the injunctive relief. Because Camacho's claims concern alleged improprieties during his criminal trial, the court assumes that the injunctive relief requested concerns Camacho's state court conviction.

A claim for injunctive relief challenging a conviction is not cognizable in a civil rights action. "A state prisoner may not bring a civil rights action in federal court under [section] 1983 to challenge either the validity of his conviction or the fact or duration of his confinement. Those challenges may be made only by petition for habeas corpus." Mack v. Varelas, 835 F.2d 995, 998 (2d Cir. 1987) (citing Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973)). Thus, if Camacho seeks release, he must file a petition for a writ of habeas corpus. Camacho's request for injunctive relief is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The court is unable to construe the complaint as a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. A prerequisite to habeas corpus relief is the exhaustion of all available state remedies. See O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney General of the State of New York, 696 F.2d 186, 190 (2d Cir. 1982), cert. denied, 464 U.S. 1048 (1982); 28 U.S.C. § 2254(b)(1)(A). The exhaustion requirement is not jurisdictional; rather, it is a matter of federal-state comity. See Wilwording v. Swenson, 404 U.S.

249, 250 (1971) (per curiam). The exhaustion doctrine is designed not to frustrate relief in the federal courts, but rather to give the state court an opportunity to correct any errors which may have crept into the state criminal process. See id. "Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, . . . state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." See O'Sullivan, 526 U.S. at 845.

The Second Circuit requires the district court to conduct a two-part inquiry into the question of exhaustion of state remedies. First, the petitioner must have raised before an appropriate state court any claim that he asserts in a federal habeas petition. Second, he must have "utilized all available mechanisms to secure appellate review of the denial of that claim." Lloyd v. Walker, 771 F. Supp. 570, 573 (E.D.N.Y. 1991) (citing Wilson v. Harris, 595 F.2d 101, 102 (2d Cir. 1979)). "To fulfill the exhaustion requirement, a petitioner must have presented the substance of his federal claims to the highest court of the pertinent state." Bossett v. Walker, 41 F.3d 825, 828 (2d Cir. 1994), cert. denied, 514 U.S. 1054 (1995) (internal citations and quotation marks omitted). See also Pesina v. Johnson, 913 F.2d 53, 54 (2d Cir. 1990) ("[T]he exhaustion requirement mandates that federal claims be presented to the highest court of the pertinent state before a federal court may consider the petition."); Grey v. Hoke, 933 F.2d 117, 119 (2d Cir. 1991) (same).

Camacho does not allege facts in his complaint suggesting that he has exhausted his state court remedies before commencing this action. He includes in his complaint, which was received by the court on October 15, 2003, allegations concerning events occurring as late as August 11, 2003. Thus,

Camacho would not have had time to pursue a direct appeal through the Connecticut Supreme Court or to file a state habeas petition and fully appeal any denial of the petition. Thus, the court concludes that Camacho's claims have not been exhausted and the court cannot construe this complaint as a petition for a writ of habeas corpus.

B. Public Defender Hutchinson

The court next considers Camacho's claims against defendant Hutchinson, his public defender.

A defendant acts under color of state law when he exercises "some right or privilege created by the State . . . or by a person for whom the State is responsible," and is "a person who may fairly be said to be a state actor." See Lugar, 457 U.S. at 937. Generally, a public employee acts under color of state law when he acts in his official capacity or exercises his responsibilities pursuant to state law. See West v. Atkins, 487 U.S. 42, 50 (1988). The Supreme Court has recognized an exception to the general rule for public defenders while they are performing the traditional function of counsel for criminal defendants. See Polk County v. Dodson, 454 U.S. 312, 317 (1981); Rodriguez v. Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997); Housand v. Heiman, 594 F.2d 923, 924-25 (2d Cir. 1979). "[W]hen representing an indigent defendant in a state criminal proceeding, the public defender does not act under color of state law for the purposes of section 1983 because he 'is not acting on behalf of the State; he is the State's adversary.'" West, 487 U.S. at 50 (quoting Polk County, 454 U.S. at 323 n.13).

Camacho alleges that defendant Hutchinson, his public defender in a state criminal matter, afforded him ineffective assistance in that she failed to speak to a witness against Camacho after Camacho informed Hutchinson that the witness wanted to recant her statement to police, failed to communicate with him and refused to provide him information upon which he could make informed

decisions regarding his defense. Representing a client at trial is part of the traditional function of counsel to a criminal defendant. Because public defenders do not act under color of state law while defending a criminal action, these claims against defendant Hutchinson are not cognizable under section 1983.

If a public defender conspires with a state official to deprive a criminal defendant of his constitutional rights, however, the public defender is deemed to have been acting under color of state law. See Tower v. Glover, 467 U.S. 914, 920-22 (1984). Here, Camacho alleges that defendant Hutchinson conspired with the prosecutor and the court to deprive him of due process.

The Second Circuit has held that to state a claim of conspiracy under section 1983, the complaint must contain more than mere conclusory allegations. See Gyadu v. Hartford Ins. Co., 197 F.3d 590, 591 (2d Cir. 1999) (restating previous holding that vague, general or conclusory allegations of conspiracy are insufficient to withstand motion to dismiss); Dwares v. City of New York, 985 F.2d 94, 99-100 (2d Cir. 1993) (citing cases). In this case, Camacho does not allege any facts to support his claim of conspiracy. Rather, he concludes that the alleged deficient performance occurred because defendant Hutchinson was part of a conspiracy. This assumption is insufficient to state a cognizable claim for conspiracy.

Further, even if Camacho had stated a claim of conspiracy, the complaint should be dismissed. If Camacho were to prevail on his claim for damages, the court would have to conclude that he was afforded ineffective assistance of counsel. Thus, Camacho's conviction necessarily would be called into question.

> [I]n order to recover damages for [an] allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [section]

> 1983 plaintiff must prove 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, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has **not** been so invalidated is not cognizable under [section] 1983. Thus, when a state prisoner seeks damages in a [section] 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction has already been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnote omitted). Camacho does not indicate whether he filed a direct appeal or a state habeas petition challenging his conviction. Because Camacho fails to demonstrate that his conviction has been invalidated, he fails to state a claim cognizable under section 1983. The claims for damages against defendant Hutchinson are dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Assistant State's Attorney Sherwood

Camacho also seeks damages from defendant Sherwood for "callous, deliberate indifference to guaranteed constitutional rights and discriminatory application of penal laws." Specifically, Camacho alleges that, during plea negotiations, defendant Shannon offered a harsher sentence than a Caucasian woman had received for the same charge and that the prosecutor added other charges after arraignment.

A prosecutor is protected by absolute immunity from a section 1983 action "for virtually all acts, regardless of motivation, associated with his function as an advocate." Dory v. Ryan, 25 F.3d 81, 83 (2d Cir. 1994). The Supreme Court has held that a prosecutor is immune from a suit to recover

damages that arise solely from the prosecution itself. "We hold only that in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." Imbler v. Pachtman, 424 U.S. 409, 431 (1976).

Camacho's claims against defendant Shannon arise from defendant Shannon's conduct during the prosecution of a state criminal case against Camacho. Thus, they are barred by absolute prosecutorial immunity. Because the court concludes that any attempt to amend the complaint would be futile, the claims against defendant Shannon are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii).

D. Commissioner Lantz

Camacho includes Commissioner of Correction Theresa Lantz as a defendant in this action. He alleges only that he is being held in the custody of the Department of Correction. There is no apparent connection between any of the claims asserted in this action and defendant Lantz, other than the fact that Camacho was incarcerated because he was unable to post bond. The court can discern no cognizable claim against defendant Lantz. Accordingly, all claims against her are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

E. Fairfield County

Camacho also includes Fairfield County as a defendant. To state a claim against defendant Fairfield County, Camacho must meet the same test established for municipal liability. See County of Sacramento v. Lewis, 523 U.S. 833, 838 n.2 (1998) (acknowledging that court of appeals applied municipal liability standard to county). In Monell v. Department of Social Services, 436 U.S. 658, 691 (1978), the Supreme Court set forth the test for municipal liability. To establish municipal liability for

the allegedly unconstitutional actions of a municipal employee, Camacho must "plead and prove three elements: (1) an official policy or custom that (2) causes the plaintiff to be subjected to (3) a denial of a constitutional right." Zahra v. Town of Southold, 48 F.3d 674, 685 (2d Cir. 1995). Municipal liability cannot be premised on a theory of *respondeat superior*. See Monell, 436 U.S. at 691.

Camacho alleges no facts from which the court could infer the existence of a county policy or custom that resulted in the claims alleged in the complaint. Indeed, the county form of government was abolished in Connecticut during the 1950's. See Commissioner of Transp. v. Camp Leonard-Leonore Corp., 2003 WL 294451, at *5 n.6 (Conn. Super. Ct. Jan. 9, 2003). Thus, all claims against defendant Fairfield County are dismissed.

F. Remaining Defendants

Finally, Camacho includes as defendants the Chief Court Administrator, the Chief State's Attorney, Governor Rowland, the Chief Public Defender, the Police Chief, the Chief Bail Commissioner and the Executive Director of Court Support Services Division. He alleges that each of these defendants failed to train subordinates resulting in the denial of his constitutional rights.

Camacho has named these defendants in their official and individual capacities. A suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Florida Dep't of State v. Treasure Salvors, 458 U.S. 670, 684 (1982). Section 1983 does not override a state's Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 342 (1979). Eleventh Amendment immunity also protects state officials sued for damages in their official capacities because such an action would result in recovery being expended from the public treasury and, thus, is

ultimately a suit against the state. See Kentucky v. Graham, 473 U.S. 159 (1985); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 n.11 (1984). Accordingly, all claims against these defendants in their official capacities are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

The court next considers Camacho's claims against these defendants in their individual capacities. It is settled law in this circuit that, in a civil rights action for monetary damages against a defendant in his individual capacity, a plaintiff must demonstrate the defendant's direct or personal involvement in the actions that are alleged to have caused the constitutional deprivation. See Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994). "A supervisor may not be held liable under section 1983 merely because his subordinate committed a constitutional tort." Leonard v. Poe, 282 F.3d 123, 140 (2d Cir. 2002). Section 1983 imposes liability only on the official causing the violation. Thus, the doctrine of *respondeat superior* is inapplicable in section 1983 cases. See Blyden v. Mancusi, 186 F.3d 252, 264 (2d Cir. 1999); see also Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 692-95 (1978).

> [A] supervisor may be found liable for his deliberate indifference to the rights of others by his failure to act on information indicating unconstitutional acts were occurring or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative causal link between the supervisor's inaction and [his] injury.

Leonard, 282 F.3d at 140.

Camacho has not alleged any link between these defendants and his claims. He does not allege that he informed any of these defendants of his concerns or that there is an affirmative causal link between any defendant's inaction and Camacho's alleged injuries. He merely assumes that if the

supervisors had trained their subordinates, none of the incidents described in the complaint would have occurred. Thus, the court concludes that Camacho has named these defendants for their supervisory roles only. The claims against defendants the Chief Court Administrator, the Chief State's Attorney, Governor Rowland, the Chief Public Defender, the Police Chief, the Chief Bail Commissioner and the Executive Director of Court Support Services Division are not cognizable in a section 1983 action on a theory of *respondeat superior* and are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). See Blyden, 186 F.3d at 264.

III. Conclusion

The complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), (ii) and (iii). Camacho may refile his claims provided he can correct the deficiencies identified above. Any appeal from this order would not be taken in good faith. The Clerk is directed to close this case.

SO ORDERED this 12th day of March 2004, at Bridgeport, Connecticut.

_/s/ Stefan R. Underhill_____
Stefan R. Underhill
United States District Judge