

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JERMAINE JONES	:	
	:	
Plaintiff,	:	PRISONER
v.	:	Case No. 3:04cv2137 (MRK)
	:	
WATERBURY POLICE	:	
DEPARTMENT, et al.,	:	
	:	
Defendants.	:	

RULING AND ORDER

Pro se plaintiff, Jermaine Jones, is confined at the MacDougall-Walker Correctional Institution in Suffield, Connecticut. He brings this civil rights action challenging the circumstances surrounding his arrest. For the reasons that follow, the complaint [doc. #1] is DISMISSED WITHOUT PREJUDICE.

I.

Mr. Jones has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed *in forma pauperis* in this action. Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the 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). *See Cruz v. Gomez*, 202 F.3d 593, 596 (2d Cir. 2000) (dismissal of a complaint by a district court under any of the three enumerated sections in 28 U.S.C. § 1915(e)(2)(B) is mandatory rather than discretionary).

"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 v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (quotations and citations omitted). 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. Dismissal of the complaint under 28 U.S.C. 1915(e)(2)(B), 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).

II.

Mr. Jones's complaint alleges a violation of his constitutional rights pursuant to 42 U.S.C. § 1983. In order to state a claim for relief under § 1983, Mr. Jones must satisfy a two-part test. First, he must allege facts demonstrating that 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. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 930 (1982). Mr. Jones alleges that on the morning of June 27, 2001, defendants Scott Stevenson, Detective Balnis, Lucinda Lopes and Detective Kennelly executed an arrest warrant against him charging him with assault, as well as a search warrant for his residence. *See* Compl. [doc. #1] at 3-4. Defendants allegedly handcuffed Mr. Jones to a daybed for approximately two hours during the search. *See id.* Mr. Jones further alleges that Defendants failed to advise him, both at the time of his arrest and when he was subsequently interrogated at the police station, that he had a right to remain silent and did not tell him that he was suspected of committing another crime. *See id.* While these allegations ordinarily might state a

claim pursuant to § 1983, Mr. Jones's claim fails for the reasons stated below.

The first named defendant is the Waterbury Police Department. Although a municipality is subject to suit pursuant to 42 U.S.C. § 1983, *see Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978), a municipal police department is not. It is a sub-unit or agency of the municipal government through which the municipality fulfills its policing function. *See Nicholson v. Lenczewski*, 356 F. Supp. 2d 157, 164 (D. Conn. 2005) (collecting cases). Because a municipal police department is not an independent legal entity, it is not subject to suit under § 1983. *See id.* Accordingly, all claims against the Waterbury Police Department are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

In addition, Mr. Jones's claims against all other defendants appear to be barred by the three-year statute of limitations for § 1983 claims. *See Lounsbury v. Jeffries*, 25 F.3d 131, 134 (2d Cir. 1994) (holding that, in Connecticut, the general three-year personal injury statute of limitations set forth in Connecticut General Statutes § 52-577 is the appropriate limitations period for civil rights actions asserted under 42 U.S.C. § 1983). When considering a case filed by a prisoner, courts consider a complaint to have been filed as of the date the inmate gives the complaint to prison officials to be mailed to the court. *See Fernandez v. Artuz*, 402 F.3d 111, 114 n.2 (2d Cir. 2005) ("the Second Circuit has consistently applied the [prisoner] mailbox rule to papers filed by state prisoners initiating" § 1983 actions). The incidents giving rise to this action occurred on June 27, 2001. *See* Compl. [doc. #1] at 3. Thus, Mr. Jones had until June 27, 2004, to file his complaint. On the record before the Court, Mr. Jones did not sign his complaint until December 8, 2004, over five months after the limitations period expired, and could not have given it to prison officials for mailing before that date. *See* Compl. [doc. #1] at 7. Accordingly, if Mr. Jones's claim is merely that

Defendants failed to inform him of his rights, that claim would be time-barred.

However, construing Mr. Jones's complaint liberally, as the Court must, it is possible that Mr. Jones is seeking damages for a conviction based on information improperly obtained without informing him of his rights. Although such a claim would not be time-barred, it would nonetheless be premature. In the seminal case of *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court explained that:

[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.

Heck, 512 U.S. at 486-87 (footnote omitted). Because Mr. Jones has alleged no facts suggesting that his conviction has been invalidated, he cannot maintain a § 1983 action based on a wrongful conviction. Therefore, the Court dismisses Mr. Jones's claims against the twelve police officer defendants named in Mr. Jones's complaint, without prejudice to renewal.

Accordingly, the Court concludes that Mr. Jones has not stated any viable claim under § 1983 against any defendant named in his complaint. If Mr. Jones can allege facts to overcome the deficiencies identified in this ruling, he may file an amended complaint against any or all of the defendants he has named, except for the Waterbury Police Department which is not subject to suit under § 1983 as explained above.

In doing so, Mr. Jones should bear in mind that Rule 8 of the *Federal Rules of Civil Procedure* provides that a complaint shall contain, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8 (a)(2). The purpose of this rule is to give

defendants fair notice of the claim being asserted to enable them to file a responsive answer, prepare an adequate defense, and determine whether the claim is barred under the doctrine of res judicata. *See Rodriguez v. Dep't of Homeland Security*, No. 3:03CV718(MRK), 2005 WL 465415, at *1 (D. Conn. Feb. 7, 2005) (citing *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)). Therefore, should Mr. Jones choose to file an amended complaint, he must allege specific facts supporting his claims with respect to *each defendant* that he names in his complaint.

IV.

In conclusion, all claims against defendant Waterbury Police Department are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). The claims against the remaining defendants are DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). **Any amended complaint shall be filed on or before June 12, 2005.** The Clerk is directed to close the file. If Mr. Jones files an amended complaint within the time specified, the Clerk shall reopen this case. **If Mr. Jones does not file an amended complaint on or before June 12, 2005, his entire lawsuit will be dismissed by the Court with prejudice.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut on: May 12, 2005.