UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ERNEST FRANCIS,	:	
	:	
Plaintiff,	:	
	:	PRISONER
v.	:	Case No. 3:04 CV 1015 (MRK)
	:	
JOSEPH PELLEGRINO,	:	
PAUL M. FOTI,	:	
JOSEPH FLYNN,	:	
BARRY SCHALLER, and	:	
GARY WHITE,	:	
	:	
Defendants.	:	

MEMORANDUM OF DECISION

The Plaintiff, Ernest Francis, an inmate confined at the MacDougall-Walker Correctional Institution in Suffield, Connecticut, brings this action *pro se* and *in forma pauperis* pursuant to 42 U.S.C. §§ 1983, 1985(2), and 1986. The Defendants named in this suit are five Connecticut judges: Judges Joseph Pellegrino, Paul M. Foti, Joseph Flynn, Barry Schaller, and Gary White. Mr. Francis alleges that the judges conspired to obstruct justice by depriving Mr. Francis of equal protection of the laws and access to the courts in violation of the United States Constitution. Complaint [doc. #1] at 1 ("Compl."). The Defendants are named in their official capacities only. *See id*. ¶¶ 4-8. Mr. Francis seeks relief by way of declaratory judgment and injunction. *Id.* at 7-8. For the reasons set forth below, the complaint is dismissed.

I.

On or about March 1, 2000, Mr. Francis filed a motion to correct an allegedly illegal sentence on the ground that the trial court had sentenced him on the basis of inaccurate information. Compl. ¶ 9. Superior Court Judge Thomas Clifford, who is not named as a

Defendant in this action, denied the motion, and Mr. Francis appealed the denial to the Connecticut Appellate Court. *Id.* ¶ 10. On April 23, 2002, a panel of the Connecticut Appellate Court consisting of Appellate Court Judges Foti, Flynn and Schaller ruled that the trial court lacked jurisdiction to consider Mr. Francis' motion, reasoning that the sentence imposed was within statutory limits and thus not subject to review. *See State v. Francis*, 69 Conn. App. 378, 384 (Conn. App. Ct. 2002). The Appellate Court therefore remanded the case "with direction to dismiss the motion." *Id.* at 385.[1] The Connecticut Supreme Court denied Mr. Francis' petition for certification to appeal the Appellate Court's decision. Compl. ¶ 16; *see State v. Francis*, 260 Conn. 935 (2002).

Mr. Francis insists that the Appellate Court erred when it declared that the trial court lacked jurisdiction to consider his motion to correct his sentence. He alleges that following the Appellate Court's ruling, he contacted Judge Joseph Pellegrino, the Chief Court Administrator, to express his view that he had been denied equal access to the courts and that the Appellate Court Judges had obstructed justice. Compl. ¶¶ 11, 16. According to the Complaint, Judge Pellegrino allegedly took no action in response to Mr. Francis' remonstrance. *Id.* ¶ 17.

Mr. Francis' claim against Superior Court Judge White arises from Judge White's potential denial of Mr. Francis' petition for a writ of habeas corpus, filed in state court on or about September 14, 2000. *Id.* ¶ 18-20. According to the Complaint, at about the same time as Mr. Francis filed his habeas corpus petition, all of the habeas petitions pending before the Hartford Superior Court were allegedly transferred to the Rockville Superior Court, except for

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[1] The Appellate Court stated that the form of the trial court's judgment was improper and therefore reversed the order denying the motion to correct an illegal sentence, and remanded with directions to dismiss the motion. *Francis*, 69 Conn. App. at 385.

seven petitions, including Mr. Francis' petition. *Id.* ¶ 19. On April 28, 2004, Mr. Francis was notified that his petition would also be transferred to the Rockville Superior Court, where it is currently pending. *Id.* ¶ 21. According to the Complaint, Judge White presided over the previously transferred habeas petitions at Rockville Superior Court, and allegedly, without issuing written decisions and after only a few hours of testimony, dismissed all of those petitions. *Id.* ¶ 20.

Mr. Francis filed this suit on June 18, 2004, and on July 1, 2004, Mr. Francis was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(a) [doc. # 5].

II.

Under 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). An action is "frivolous" within the meaning of § 1915(e)(2)(B)(i) "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 . . . [and a] claim is based on an indisputably meritless legal theory when either the claims lacks an arguable basis in law or a dispositive defense clearly exists on the face of the complaint." *Livingston v. Adirondack Bev. Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal quotations and citations omitted). "However, since most *pro se* plaintiffs lack familiarity with the formalities of pleading requirements, [the court] must construe *pro se* complaints liberally, applying a more flexible standard to evaluate their sufficiency than . . . when reviewing a complaint submitted by

counsel." *Lerman v. Bd. of Elections*, 232 F.3d 135, 139-40 (2d Cir. 2000) (citations omitted) (quotation marks and footnote omitted). "In evaluating [the plaintiff's] complaint, [the Court] must accept as true all factual allegations in the complaint and draw all reasonable inferences in [the plaintiff's] favor." *Cruz*, 202 F.3d at 596-97.

A. Claims Against Judges Foti, Flynn, and Schaller

The claims against Appellate Court Judges Foti, Flynn, and Schaller (the "Appellate Judges") must be dismissed for lack of jurisdiction on the basis of absolute judicial immunity. "[A] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction . . . [;][s]econd, a judge is immune only for actions performed in his judicial capacity." *Tucker v. Outwater*, 118 F.3d 930, 933 (2d Cir. 1997) (quotation and citation omitted) (emphasis in original); *see Montero v. Travis*, 171 F.3d 757, 761 n. 2 (2d Cir. 1999). The Second Circuit has emphasized that "[t]he cloak of immunity is not pierced by allegations of bad faith or malice, even though 'unfairness and injustice to a litigant may result on occasion.'" *Tucker*, 118 F.3d at 932. Since Mr. Francis does not allege or suggest that the Appellate Judges who decided his case acted in the absence of all jurisdiction, and the judges indisputably acted in their judicial capacities when they remanded Mr. Francis' appeal to the Superior Court with directions to dismiss the case, the Appellate Judges are entitled to absolute immunity. *See Sullivan v. Stein*, Civ. No. 3:03CV1203 (MRK), 2004 WL 1179351, at *5-*6 (D. Conn. May 21, 2004). Consequently, the Court dismisses all claims against the

Appellate Judges.[2]

B. Claims Against Judges White and Pellegrino

Mr. Francis' claim against Judge White cannot be maintained since Mr. Francis does not allege that Judge White has been, or is likely to be, assigned to Mr. Francis' habeas petition. Rather than requesting relief from an injunction:

> [P]reventing Judge Gary White from denying plaintiff access to the courts and violating his rights to equal treatment as it pertains to access to the courts. The actions of Gary White Superior Court Judge acting on policy of the Chief Court administrator denying habeas relief with out a fair hearing obstructs justice by means of denying certification to appeal, in order to prevent Appellate Review. This procedure is practice by Judge White even though 80% of the cases denied certification are debatable among jurists.

Compl. at 7. Mr. Francis' reference to Judge White's decisions on other habeas petitions is irrelevant to Mr. Francis' case, especially since Mr. Francis does not even allege that his habeas petition has been or will be assigned to Judge White.

As such, Mr. Francis cannot establish Article III standing. Mr. Francis has failed "to clearly demonstrate that he has suffered an 'injury in fact,' . . . [which] must be concrete in both a qualitative and temporal sense." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990); *see Shain v. Ellison*, 356 F.3d 211, 215 (2d Cir. 2004). He has also failed to "allege an injury to himself that is 'distinct and palpable,' as opposed to merely '[a]bstract,'" *Whitmore*, 495 U.S. at 155 (citations

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[2] In any case, "[t]he *Rooker-Feldman* doctrine bars collateral attack on a state court judgment which attempts to cloak the attack as a § 1983 action in federal court." *Davidson v. Garry*, 956 F. Supp. 265, 269 (E.D.N.Y. 1996), *aff'd*, 112 F.3d 503 (2d Cir. 1997); *see Brooks-Jones v. Jones*, 916 F. Supp. 280, 281 (S.D.N.Y. 1996) ("A plaintiff also 'may not seek a reversal of a state court judgment simply by casting [her] complaint in the form of a civil rights action.'") (citing *Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993)) (citation omitted).

omitted) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)), and that is "actual or imminent, not 'conjectural' or 'hypothetical.'" *Vermont Agency of Natural Res. v. United States*, 529 U.S. 765, 771 (2000) (citation omitted); *cf. Lewis v. Casey*, 518 U.S. 357 (1996) ("[F]or even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'") (citation omitted). Mr. Francis clearly has not done so. Mr. Francis is also unable to satisfy the "causation" and "redressability" prongs of the Article III standing minima "by showing that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" *Id.* (quoting *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976)) (citation omitted).

In order to litigate his suit before this Court, Mr. Francis "must clearly and specifically set forth facts sufficient to satisfy these Art. III standing requirements." *Whitmore*, 495 U.S. at 155-56. "These requirements together constitute the 'irreducible constitutional minimum' of standing," *Vermont Agency of Natural Res.*, 529 U.S. at 771, and "[a] federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore*, 495 U.S. at 155-56. Mr. Francis has not, and indeed, cannot demonstrate standing since the alleged injury is entirely hypothetical at this point, and is not one that Mr. Francis can demonstrate he has suffered or will imminently suffer.

Moreover, even if Mr. Francis amended his complaint to establish that Judge White had been assigned to his habeas petition and had denied the petition, as Mr. Francis fears, this Court still cannot adjudicate his claim. For, as discussed above, Judge White's judicial actions would be cloaked with absolute immunity, and, if instead, Mr. Francis wished to challenge Judge

White's disposition of his petition, the *Rooker-Feldman* doctrine would bar such a claim. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). "Under the *Rooker-Feldman* doctrine, inferior federal courts have no subject matter jurisdiction over suits that seek direct review of judgments of state courts, or that seek to resolve issues that are 'inextricably intertwined' with earlier state court determinations." *Vargas v. City of New York*, 2004 WL 1663476, at *3 (2d Cir. July 27, 2004); *see Santini v. Connecticut Hazardous Waste Mgmt. Serv.*, 342 F.3d 118, 126 (2d Cir. 2003) ("The essence of the *Rooker-Feldman* doctrine 'is that inferior federal courts have no subject matter jurisdiction over cases that effectively seek review of judgments of state courts and that federal review, if any, can occur only by way of a certiorari petition to the Supreme Court.'") (quoting *Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d 195, 197 (2d Cir.1996)). The Court therefore dismisses all claims against Judge White.

As to Judge Pellegrino, Mr. Francis speculates that "[Judge Pellegrino] as part of an effort to save judicial expenditures has conspired with Judge White to deny the plaintiff and all criminal defendants similarly situated access to the courts. Wherefor the plaintiff asks that an injunction issue preventing the defendants from denying the plaintiff access to the courts." Compl. at 7. However, the Court has already determined that Mr. Francis lacks standing to sue Judge White since Mr. Francis has not identified a harm he has suffered that is attributable to Judge White. It stands to reason that Mr. Francis cannot demonstrate standing to sue Judge Pellegrino for an injury resulting from a purported conspiracy with Judge White. Furthermore, Mr. Francis makes no additional allegations upon which the Court is able to find that Judge Pellegrino either obstructed justice with regard to Mr. Francis or otherwise deprived him of his

constitutional rights. In any case, absolute judicial immunity would shield Judge Pellegrino from any action taken in his judicial capacity. Therefore, the Court dismisses all claims against Judge Pellegrino.

The Court is cognizant of the Second Circuit's admonition to afford *pro se* plaintiffs an opportunity to amend a complaint before dismissal. *See*, *e.g.*, *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 797 (2d Cir. 1999). However, the Second Circuit noted in *Cruz* that, "although the language of § 1915 is mandatory . . . we conclude that a *pro se* plaintiff who is proceeding *in forma pauperis* should be afforded the same opportunity as a *pro se* fee-paid plaintiff to amend his complaint prior to its dismissal for failure to state a claim *unless* the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim." *Cruz*, 202 F.3d at 597-98 (emphasis added). The Court is convinced that there is no possibility that Mr. Francis can amend his Complaint to rectify the present infirmities that bar his claims against the judicial defendants in this case. Therefore, the Court sees no reason to provide an opportunity to amend the complaint.

V. Conclusion

For the foregoing reasons, the Court dismisses Mr. Francis' complaint with prejudice. The Clerk is directed to close this file.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: August 4, 2004.