

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

GARRY KLINGER :  
 :  
 v. : PRISONER  
 : CASE NO. 3:04CV1081(MRK)  
 :  
 STATE OF CONNECTICUT :

RULING AND ORDER

The plaintiff, Garry Klinger (“Klinger”), currently is confined at the Osborn Correctional Institution in Somers, Connecticut. He brings this civil rights action pro se pursuant to 28 U.S.C. § 1915. Mr. Klinger seeks damages and a determination that Connecticut General Statute § 53a-39 is unconstitutional. For the reasons that follow, the complaint is dismissed without prejudice.

In all cases filed by prisoners, the court must conduct an initial screening 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).

“The Eleventh Amendment has been interpreted to render states absolutely immune from suit in federal court unless they have consented to be sued in that forum or unless Congress has overridden that immunity by statute.” *National Foods, Inc. v. Rubin*, 936 F.2d 656, 658-59 (2d Cir. 1991). *See also, Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 68 (1996) (“Although a case may arise under the Constitution and laws of the United States, the judicial power does not extend to it if the suit is sought to be prosecuted against a State, without her consent, by one of

her own citizens.") (citing *Principality of Monaco v. Mississippi*, 292 U.S. 313, 321-23 (1934)). Section 1983 does not override a state's Eleventh Amendment immunity. See *Quern v. Jordan*, 440 U.S. 332, 342 (1979). Thus, states are not persons subject to suit under section 1983. See *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). Because the state is immune from suit in federal court, the complaint lacks an arguable legal basis and is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). See *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("claims against which it is clear that the defendants are immune from suit" lack an arguable legal basis and should be dismissed).

When a prisoner plaintiff mistakenly names as defendant in a civil rights action only a state agency, the Second Circuit recommends that the district court afford plaintiff an opportunity to amend his complaint to include the appropriate correctional officials. See *Soto v. Brooklyn Correctional Facility*, 80 F.3d 34 (2d Cir. 1996) (reversing and remanding to enable plaintiff to amend to name appropriate defendants and determining that such amendment would relate back to date of filing of original complaint). Mr. Klinger has not included a proper defendant in this case. Therefore, the court will grant him leave to file an amended complaint identifying a proper defendant. In amending his complaint, Mr. Klinger should bear in mind that while he may seek injunctive relief against state officials in their official capacities, the Eleventh Amendment bars him from seeking "money damages against state officials in their official capacities." See *Ford v. Reynolds*, 316 F.3d 351, 354 (2d Cir. 2003). State officials can be sued for money damages only in their individual capacities. *Id.*

In conclusion, the complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). Mr. Klinger may file a motion to reopen this case accompanied by an

amended complaint **no later than October 11, 2004** provided he can identify a proper defendant for his claim. In light of the dismissal of this action, Mr. Klinger's motion for appointment of counsel [**doc. #3**] is **DENIED**.

**SO ORDERED** this 14th day of September, 2004, at New Haven, Connecticut.

/s/ Mark R. Kravitz  
United States District Judge