UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

GARY SADLER

v. No. 3:04-cv-1189 (SRU)

STATE OF CONNECTICUT SUPREME COURT
WILLIAM J. SULLIVAN
DAVID M. BORDEN
JOETTE KATZ
FLEMMING L. NORCOTT, JR.
RICHARD N. PALMER
CHRISTINE S. VERTEFEUILLE
PETER T. ZARELLA
STATE OF CONNECTICUT APPELLATE COURT
WILLIAM J. LAVERY
ANNE C. DRANGINIS
JOSEPH P. FLYNN
PAUL M. FOTI
SIDNEY S. LANDAU
SOCRATES H. MIHALIKOS
JOSEPH H. PELLEGRINO
BARRY R. SCHALLER
E. EUGENE SPEAR
STATE OF CONNECTICUT SUPERIOR COURT JUDGE GARY WHITE
STATE OF CONNECTICUT ADMINISTRATIVE JUDGE JOSEPH PELLEGRINO
STATE OF CONNECTICUT ROCKVILLE SUPERIOR COURT JUDGES

RULING AND ORDER

The plaintiff, Gary Sadler ("Sadler"), an inmate confined at the MacDougall-Walker Correctional Institution in Suffield, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He names as defendants the Connecticut Supreme and Appellate Courts and all of the judges sitting thereon as well as all superior court judges assigned to Rockville, Connecticut. Sadler alleges that the actions of these judges deprived him of equal protection

of the law and access to the courts. He seeks declaratory and injunctive relief only. For the reasons that follow, the complaint is dismissed.

I. Standard of Review

Sadler 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). Thus, the 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. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

"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) (quoting Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990)).

> 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, 141 F.3d at 437. 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, 202 F.3d at 596 ("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).

In order to state a claim for relief under section 1983 of the Civil Rights Act, Sadler must satisfy a two-part test. First, he must allege facts demonstrating that the defendants 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); Washington v.

James, 782 F.2d 1134, 1138 (2d Cir. 1986).

II. Allegations

In July 2001, Sadler, acting pro se, filed a petition for writ of habeas corpus in the Connecticut Superior Court for the Judicial District of Hartford on the ground that he had been afforded ineffective assistance of trial counsel. The state court appointed a special public defender to represent Sadler. Counsel amended the petition.

In April 2003, defendant Pellegrino, the Chief Administrative Judge, transferred all but seven habeas petitions pending in Hartford to the Superior Court in Rockville. Sadler's petition was one of the ones transferred. He was told that the transfer was intended to expedite consideration of the petitions because the docket in Hartford was overcrowded.

On January 13, 2004, Sadler appeared before defendant White for a hearing on his petition. Prior to the hearing, Sadler requested new counsel, claiming a conflict of interest with appointed counsel because counsel had not interviewed witnesses and properly familiarized himself with the case. Defendant White denied Sadler's request when questioning revealed that counsel had investigated the claims and was prepared to proceed. Defendant White offered Sadler the option of proceeding pro se, but Sadler declined. During the hearing, counsel focused on three of the eight claims included in the amended petition. Defendant White would not allow Sadler to question witnesses regarding the other claims. Defendant White concluded that Sadler had not proved that trial counsel was ineffective and denied the petition. Defendant White also denied Sadler's petition for certification to appeal.

Sadler filed a second petition in the Superior Court in Hartford including claims that habeas

counsel was ineffective. That petition also was transferred to Rockville.

Sadler alleges that his research has revealed that defendant White, and several other judges assigned to Rockville, have dismissed all petitions that had come before them and always have denied certification to appeal. Other judges have granted petitions with similar claims or denied them and granted certification to appeal. Sadler also alleges that his research has revealed that the decisions of the Superior Court judges denying state habeas petitions have almost always been upheld by the Connecticut Appellate Court regardless whether certification to appeal was granted.

III. Discussion

Sadler alleges that the judges of the Superior, Appellate and Supreme Courts have planned to deny all habeas petitions regardless of the merits of the claims. He does not allege, however, that he has appealed any case to the Connecticut Appellate or Supreme Court.[1] Sadler argues that all defendants have denied him the right to petition the government for redress of grievances, due process, equal protection, access to the courts and the right to counsel. For relief, Sadler asks this court to enjoin all state court judges from deciding any issues relating to his claims until the conclusion of this case and to enjoin all judges in Rockville from denying certification to appeal unless the claims are frivolous and from deciding any issue regarding to Sadler without affording him a fair means to be heard. He also seeks a declaration stating that all state appellate habeas decisions over the last nine

[1] Sadler alleges that defendant White, a Superior Court judge, denied his petition for certification to appeal. Connecticut rules of practice provide that Sadler may appeal that determination on the ground that the denial was an abuse of discretion. See Simms v. Warden, 230 Conn. 608, 646 A.2d 126 (1994) (permitting appeal following denial of certification where petitioner can demonstrate abuse of discretion in denial of certification).

years regarding ineffective assistance of counsel violate the petitioners' rights to counsel, due process and equal protection, that defendant White violated Sadler's rights by failing to appoint substitute counsel upon request, that defendant Pellegrino violated Sadler's right to access to the courts and to petition for redress of grievances when he transferred Sadler's cases to Rockville, and that all defendants have conspired to obstruct justice.

In Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), the Supreme Court held that the federal district court lacks subject matter jurisdiction to review state court judgments. Thus, under the Rooker-Feldman doctrine, the federal district cannot entertain a collateral attack on a state court judgment "cloak[ed] . . . as a [section] 1983 action." Davidson v. Garry, 956 F. Supp. 265, 269 (E.D.N.Y. 1996), aff'd, 112 F.3d 503 (2d Cir. 1997). Section 1983 may not be used as a substitute for the right of appeal in the state courts. See Tonti v. Petropoulous, 656 F.2d 212, 216 (6th Cir. 1981); McArthur v. Bell, 788 F. Supp. 706, 709 (E.D.N.Y. 1992); Noyce v. City of Iola, Kansas, No. 89-4092-R, 1990 WL 41399 (D. Kan. Mar. 29, 1990) (citing cases).

This court lacks subject matter jurisdiction to review the actions of the state court. See Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996) (holding that challenge under Rooker-Feldman doctrine goes to subject matter jurisdiction and may be raised sua sponte by the court). Although couched in general termd, Sadler's complaint essentially is a challenge to defendant White's denial of Sadler's state habeas petition and denial of certification to appeal. His recourse is in the state courts with a final appeal to the United States Supreme Court. Because the district court lacks subject matter jurisdiction to review the actions of the state Superior Court, Sadler's

claims against defendant White, in particular, and against all Superior Court judges assigned to Rockville must be dismissed. Sadler should pursue these claims in the state courts with any denial appealed to the United States Supreme Court.

Sadler also included as defendants all judges on the Connecticut Supreme Court and the Connecticut Appellate Court. Although he fails to allege in his complaint any action taken by any of these judges in his case, he claims that they have interfered with his First Amendment right of access to the courts. In Lewis v. Casey, 518 U.S. 343 (1996), the Supreme Court clarified what is encompassed in an inmate's right of access to the courts and what constitutes standing to bring a claim for the violation of that right. The Court held that to show that the defendants violated his right of access to the courts, an inmate must allege facts demonstrating an actual injury stemming from the defendants' unconstitutional conduct. See id. at 349. Because no state Supreme or Appellate Court judge has taken any action in any of Sadler's cases, he cannot allege facts demonstrating that he suffered an actual injury as required to state a First Amendment claim against them. Thus, the court concludes that he is attempting to raise claims on behalf of other inmates.

Sadler filed this case pro se. A litigant in federal court has a right to act as his own counsel. See 28 U.S.C. § 1654 ("in all courts of the United States the parties may plead and conduct their own cases personally or by counsel"). A non-attorney, however, has no authority to appear as an attorney for others. See Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1308 (2d Cir. 1991) (Section 1654 "'does not allow for unlicensed laymen to represent anyone else other than themselves'") (quoting Turner v. American Bar Ass'n, 407 F. Supp. 451, 477 (N.D. Tex. 1975), aff'd sub nom. Pilla v. American Bar Ass'n, 542 F.2d 56 (8th Cir. 1976)). Thus, Sadler cannot raise claims against the

Connecticut Appellate and Supreme Court judges on behalf of other inmates. Accordingly, all claims against the judges of the Connecticut Supreme Court and the Connecticut Appellate Court are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IV. Conclusion

The complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk is directed to enter judgment and close this case.

SO ORDERED this 4th day of October 2004, at Bridgeport, Connecticut.

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