

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DARRIN RICK WELLS

Plaintiff

v.

PROSECUTOR MIRIANI

Defendant

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PRISONER
NO. 3:04CV278 (MRK)

RULING AND ORDER

The Plaintiff, Darrin Rick Wells, an inmate currently confined at the Corrigan-Radgowski Correctional Institution in Uncasville, Connecticut, brings this civil rights action *pro se* and *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Wells alleges that Miriani, the prosecutor in his state criminal case, "used" falsified evidence in a probable cause hearing, failed to produce a police report in response to Mr. Wells' attorney's discovery request, and "prosecuted [him] with lies." He seeks dismissal of his state criminal case, \$12,000,000 in damages, and the dismissal and criminal prosecution of Defendant Miriani. For the reasons that follow, the Complaint [doc. #1] is dismissed.

I.

Mr. Wells has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. However, 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).

In reviewing Mr. Wells' 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 Mr. Wells. *Cruz*, 202 F.3d at 596. "[W]hen 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 requisite details." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (quotations and citations omitted). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B) is appropriate only 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." *Cruz*, 202 F.3d at 597 (quoting *Conley v. Gibson*, 355 U.S. 41, 45- 46 (1957)).

Furthermore, the Second Circuit has recently emphasized that "*pro se* litigants . . . cannot be expected to know all of the legal theories on which they might ultimately recover. It is enough that they allege that they were injured, and that their allegations can conceivably give rise to a viable claim." *Phillips v. Girdich*, 408 F.3d 124, 130 (2d Cir. 2005). It is up to the district court to determine what claims a *pro se* plaintiff's complaint could raise, and in doing so, "the court's imagination should be limited only by [the plaintiff]'s factual allegations, not by the legal claims set out in his pleadings." *Id.*¹

II.

Mr. Wells alleges that Miriani, the prosecutor in his state criminal case, "used" falsified

¹ In this regard, the Court notes that read for all its worth, Mr. Wells' Complaint may state a claim against the detectives in his state case for falsifying evidence. However, Mr. Wells does not name those detectives as defendants in this action, and the Court therefore does not consider any such claims.

evidence in a probable cause hearing, failed to produce a police report in response to his attorney's discovery request, and "prosecuted [him] with lies." He seeks dismissal of the state criminal case against him, \$12,000,000 in damages, and the dismissal and criminal prosecution of Prosecutor Miriani.

A. Injunctive Relief

Mr. Wells claims he has been incarcerated pursuant to state charges since July 2003, and asks the Court to order that the criminal charges on which he is being held be dismissed. The Court notes that it is unclear from the Complaint whether Mr. Wells has already been convicted of the charges, although the juxtaposition of his references to a pending suppression hearing, Complaint [doc. #1] at 3, and his assertion that he has no other pending state or federal lawsuits, Complaint [doc. #1] at 2, suggests that at the time of filing he had not been convicted.

If Mr. Wells has not yet been convicted, and he seeks relief from on-going criminal prosecution, this Court is barred from granting Mr. Wells the relief he seeks by the rule in *Younger v. Harris*, 401 U.S. 37 (1971), which forbids federal courts from interfering with pending state prosecutions.

If Mr. Wells has already been convicted and seeks relief from incarceration, the Court cannot grant Mr. Wells the injunctive relief that he requests because such relief is not available in an action under Section 1983. Rather, relief from the fact or conditions of confinement may be granted only in response to a successful petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See, e.g., Abdul-Hakeem v. Koehler*, 910 F.2d 66, 68-69 (2d Cir.1990) (habeas corpus, not an action under § 1983, is the appropriate remedy for a state prisoner to challenging the fact or duration of his confinement and seeking immediate or speedy release from physical imprisonment) (citing *Prieser*

v. Rodriguez, 411 U.S. 475, 489 (1973)). Accordingly, Mr. Wells' claim for dismissal of the state court charges filed against him must be dismissed.

Furthermore, even if the Court were to construe Mr. Wells' Complaint as a petition for writ of habeas corpus, Mr. Wells's petition would fail because he has not alleged that he attempted to exhaust his state court remedies for these claims prior to filing this action. *See* 28 U.S.C. § 2254(b)(1)(A); *Galdamez v. Keane*, 394 F.3d 68, 73 (2d Cir. 2005) (Exhaustion of all available state remedies is a prerequisite to habeas relief under Section 2254, that is, a petitioner must have " 'fairly presented his [or her] claims to the state courts.' ") (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999)). The Second Circuit has held that to "satisfy § 2254's exhaustion requirement, a petitioner must present the substance of the same federal constitutional claims that he now urges upon the federal courts to the highest court in the pertinent state." *Aparicio v. Artuz*, 269 F.3d 78, 89-90 (2d Cir. 2001) (internal quotation marks and citations omitted). The purpose of the requirement is not to block access to federal courts, but, as a matter of federal-state comity, to give state courts an opportunity to correct any errors that may have crept into the state criminal process. *See Wilwording v. Swenson*, 404 U.S. 249, 250 (1971) (per curiam).

In his Complaint [doc. #1], Mr. Wells asserts that he has not raised these matters in other lawsuits, *id.* at 2. Because he does not allege that he has taken advantage of state court remedies by appealing any decision of the trial court to the Connecticut Appellate or Supreme Courts prior to commencing this action, his claims are unexhausted. Thus, if the Court were to construe the Complaint as a petition for a writ of habeas corpus, it would be subject to dismissal for failure to exhaust state court remedies.

For the reasons stated above, all claims for injunctive relief are dismissed pursuant to 28

U.S.C. § 1915(e)(2)(B)(ii).

B. Damages

Mr. Wells also seeks damages from Prosecutor Miriani. "It is by now well established that a state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution . . . is immune from a civil suit for damages under § 1983." *Schmueli v. City of New York*, No. 03-0287-pr, slip-op at 5561-62 (2d Cir. Sept. 14, 2005) (internal quotation marks and citations omitted). Prosecutorial immunity from suit for activities that are "intimately associated with the judicial phase of the criminal process," *Imbler*, 424 U.S. at 430-31, is not overcome by "allegations that [the prosecutor's] actions were undertaken with an improper state of mind or improper motive." *Schmueli* at 5563. This is because " '[t]he public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages.' " *Id.* at 5562 (quoting *Imbler*, 424 U.S. at 424-25).

Here, Mr. Wells alleges that Miriani, as the prosecutor in his state criminal case, introduced at the probable cause hearing evidence that the prosecutor knew was false, and further failed to provide certain documents to Mr. Wells' attorney in response to a discovery request. Decisions about what evidence to submit to the Court and turn over to the defense are a necessary part of a prosecutor's role in the judicial phase of the criminal process, and Prosecutor Miriani is accordingly entitled to prosecutorial immunity for them. Therefore, Mr. Wells' claims for monetary damages against Prosecutor Miriani must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

C. Disciplinary or Criminal Action

Finally, Mr. Wells asks the Court to order that Prosecutor Miriani be dismissed from the position of state prosecutor and be subjected to criminal charges. This Court does not have the

authority to order Prosecutor Mariani dismissed, and, as the Supreme Court stated in *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973), "in American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *See also, Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir.1988) (There is no constitutional right as a "member of the public at large and as a victim" to have someone criminally prosecuted). Therefore, "[a]n alleged victim of a crime does not have a right to have the alleged perpetrator investigated or criminally prosecuted." *Osuch v. Gregory*, 303 F. Supp. 2d 189, 194 (D. Conn. 2004). Thus, Mr. Wells' claim seeking dismissal and criminal prosecution of Prosecutor Miriani is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

III.

The Complaint [doc. #1] is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii). Any appeal from this decision would not be in good faith. 28 U.S.C. § 1915(a)(3). **The Clerk is directed to close this case.**

IT IS SO ORDERED

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: October 12, 2005.