

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

STANLEY CHANCE,	:	
	:	CIVIL ACTION
Plaintiff,	:	NO. 3:04CV155 (MRK)
	:	
v.	:	
	:	
STATE OF CONNECTICUT	:	
SUPERIOR COURT, ET AL.	:	
	:	
Defendants.	:	

RULING AND ORDER

Before the Court is Defendants’ Motion to Dismiss [doc. #18], which was filed on July 12, 2004. After Plaintiff Stanley Chance failed to timely respond to Defendants’ motion, the Court ordered Plaintiff to show cause why Defendants’ motion should not be granted and advised Plaintiff that his failure to respond could result in the dismissal of his case. *See* Order To Show Cause [doc. #24]. To date, Mr. Chance has not responded to this motion. Under Rule 41(b) of the *Federal Rules of Civil Procedure*, this alone would be grounds for the Court to dismiss Mr. Chance’s action in its entirety. Nevertheless, the Court concludes that even after reviewing Mr. Chance’s complaint on the merits, he has failed to state any claims upon which this Court can grant him relief.

Briefly summarized, Mr. Chance’s claims arise out of his dissatisfaction with the sentence he received in November 1993 after he was convicted for arson in the first degree in violation of Conn. Gen. Stat. § 53a-111a for burning a mattress. *See* Compl. at 4 [doc. #3]. Mr. Chance claims that while he caused only \$80 of damage and received a sentence of seven years,

another defendant (Joseph Lancia) who was also convicted of arson in the first degree and sentenced by the same judge, caused over \$2,000,000 of damage but was given only a suspended sentence. *Id.* Mr. Chance subsequently attempted, unsuccessfully, to challenge and appeal his conviction and sentence through the state court system.

Mr. Chance now sues the Estate of Judge Richard J. Stanley, the judge who sentenced him, Judge Ronald Fasano, the judge who upheld his sentence, the Superior Court itself, his own attorney (Assistant Public Defender Elizabeth Merkin), the prosecuting attorneys who worked on his case (James Clark, James Dinnen, James Killen and Susan Marks) and Susan Reeve, the Assistant Clerk of the Appellate Court who entered the order dismissing his appeal. *See* Compl. at 1-2. He asserts claims under both 42 U.S.C. § 1983 and 28 U.S.C. § 2254.

"[W]hen [a] plaintiff proceeds *pro se* . . . a court is obliged to construe his pleadings liberally, particularly when they allege civil rights violations." *Hemphill v. New York*. 380 F.3d 680, 687 (2d Cir. 2004). "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 v. Gomez*, 202 F.3d 593, 596-97 (2d Cir. 2000). Dismissal of the complaint 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)).

Though Mr. Chance seeks relief under both Section 1983 and Section 2254, it is unclear precisely what type of relief he is seeking because the relief sought portion of Plaintiff's

complaint is not legible.¹ See Compl. at 7. Based on what is legible, Mr. Chance appears to seek damages for his allegedly wrongful conviction and sentence, as well as declaratory and injunctive relief under § 1983 invalidating his conviction and altering his criminal sentence. This relief is clearly barred by the Supreme Court's holdings in *Heck v. Humphrey*, 512 U.S. 477 (1994), which was recently reaffirmed in *Muhammad v. Close*, 124 S.Ct. 1303 (2004). In, *Heck* the Supreme Court reiterated that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983." 512 U.S. at 481 (quoting *Preiser v. Rodriguez*, 411 U.S. 475 (1973)). Therefore, the Court will consider Mr. Chance's claims for injunctive and declaratory relief only as part of his habeas claim under Section 2254.

With respect to Mr. Chance's claim for damages, the Supreme Court stated just last Term that, "where success in a prisoner's § 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence." *Muhammad*, 124 S.Ct. at 1304. Although Plaintiff appealed his sentence and conviction in the state court system and through a federal habeas petition, Mr. Chance has, to date, been unsuccessful in those efforts. See Compl. at 5; *Chance v. Kupec*, No. 3:96CV2204AHNHBF, 1998 WL 846740 (D. Conn. Nov. 18, 1998) (denying Mr. Chance's habeas petition on the merits). Therefore, the Court dismisses Mr. Chance's § 1983 claims to the extent that they relate to the duration of his sentence and the validity of his conviction.

¹ Defendants have requested a legible copy of the complaint, see Letter of 6/22/04, Ex. B [doc. #19], but Mr. Chance has failed to provide one.

In *Muhammad*, the Supreme Court also clarified that “a prisoner’s challenge that threatens no consequence for his conviction or the duration of his sentence” is not subject to the requirement that the prisoner must first “resort to state litigation and federal habeas.” *Id.* at 1304-05. Even if Mr. Chance’s complaint raised such challenges – and it does not appear to the Court that his complaint does – those claims would still fail because none of the defendants in this action is subject to suit based on the facts Mr. Chance has alleged, even construing those facts as liberally and expansively as reasonably possible.

For one thing, the Defendant Superior Court of Connecticut is immune from suit under the Eleventh Amendment as an arm of the State. *See Greene v. Connecticut*, No. 3:04CV658 (MRK), 2004 WL 2713226, at *2 (D. Conn. Nov. 22, 2004) (Eleventh Amendment bars suit against the State of Connecticut Judicial Branch); *Richards v. State*, 597 F. Supp. 692, 693 (D.C.N.Y. 1984) (New York Court of Appeals immune from suit under the Eleventh Amendment).

In addition, Mr. Chance’s only claims against Judge Fasano and Judge Stanley’s Estate relate to their actions in sentencing him and adjudicating his claims. *See Compl.* at 4-5. As such, those claims are barred by the doctrine of absolute judicial immunity. *See Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (it is “well established that officials acting in a judicial capacity are entitled to absolute immunity against § 1983 actions, and this immunity acts as a complete shield to claims for money damages”). Likewise, Mr. Chance’s claims against Ms. Reeve, which arise from her act of issuing an order dismissing his appeal and denying his motion for reconsideration, are also barred. “[C]lerks, like judges, are immune from damage suits for performance of tasks that are an integral part of the judicial process.” *Sandall v. Suda*, 986 F.2d

1459, 1460 (D.C. Cir. 1993), cited in *Rodriguez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997) (dismissing § 1983 claim against court clerk under the doctrine of judicial immunity).

The portion of Mr. Chance's complaint addressing his claims against the State's prosecuting attorneys is not fully legible. *See* Compl. at 6. Nevertheless, Mr. Chance's claims against each prosecuting attorney appear to relate to the motions and pleadings that he or she filed during the course of the State's criminal case against him. However, any such claims are barred by the doctrine of absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (prosecutors are absolutely immune from damages arising out of their acts in "initiating a prosecution and presenting the State's case"); *Bernard v. County of Suffolk*, 356 F.3d 495, 502 (2d Cir. 2004) (same).

Finally, Mr. Chance's allegations against his own attorney, Ms. Merkin, fail because she is not a state actor and she did not act under color of state law. "In order to state a claim under § 1983, a plaintiff must allege that he was injured by either a state actor or a private party acting under color of state law." *Ciambriello v. Country of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (quoting *Spear v. Town of West Hartford*, 954 F.2d 63, 68 (2d Cir. 1992)). The Supreme Court has held that "a public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). *See also Weprin*, 116 F.3d at 66 ("[I]t is well-established that court-appointed attorneys performing a lawyer's traditional functions as counsel to defendant do not act 'under color of state law' and therefore are not subject to suit under 42 U.S.C. § 1983."). Since Mr. Chance's claims against Ms. Merkin relate solely to her performance of her duties as his counsel, *see* Compl. at 7, Ms. Merkin is entitled to absolute immunity.

Mr. Chance's complaint also requests habeas relief under 28 U.S.C. § 2254. *See* Compl. at 3. However, Mr. Chance previously filed a habeas petition challenging his conviction for arson that was denied on the merits, *see Chance*, 1998 WL 846740, at *7, and therefore the portion of his complaint that seeks habeas corpus relief constitutes a successive petition. The Second Circuit has instructed district courts that "when a second or successive petition for habeas corpus relief . . . is filed in a district court without the authorization by this Court that is mandated by §2244(b)(3), the district court should transfer the petition or motion to this Court in the interest of justice pursuant to [28 U.S.C.] §1631." *Liriano v. United States*, 95 F.3d 119, 122 (2d Cir. 1996). Accordingly, having dismissed all of Mr. Chances non-habeas corpus civil rights claims, the court GRANTS Defendants' Motion to Transfer to the U.S. Court of Appeals [**doc. #16**] and transfers the remainder of the case to the United States Court of Appeals for the Second Circuit in the interest of justice under 28 U.S.C. § 1631.

For the aforementioned reasons, the Court also GRANTS Defendants Motion to Dismiss [**doc. #18**] with respect to Mr. Chance's claims that do not request habeas relief. **The Clerk is directed to close the file.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 13, 2004.