

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTER S. MINTZ, III : CIVIL ACTION
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: :
v. : :
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: :
COMMONWEALTH OF PENNSYLVANIA, :
et al. : NO. 99-CV-3543

MEMORANDUM

Padova, J.

March 29, 2000

Plaintiff Walter S. Mintz III filed a pro se complaint against the Commonwealth of Pennsylvania, County of Schuylkill, Schuylkill County Criminal Courthouse, Judge David A. Plachko, Pottsville District Attorney's Office, District Attorney Claude A. Lord Shields, Pennsylvania State Police Trooper David M. Wieseman, Judge P.J. Baldwin, the Office of the Public Defender of Schuylkill County, Michael J. O'Connor, Esq., Gregory Stapp, Esq., and various unnamed individuals and corporations. Plaintiff alleges that Defendants violated his Fourth, Fifth and Fourteenth Amendment rights by falsely imprisoning and maliciously prosecuting him.

Defendants Office of the Public Defender of Schuylkill County ("Public Defender's Office"), Michael J. O'Connor ("O'Connor"), and Gregory Stapp ("Stapp") have moved to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(4),(5), and (6) of the Federal

Rules of Civil Procedure. For the following reasons, the Court grants Defendants' Motion.

I. STANDARD OF REVIEW

Courts must liberally construe pro se pleadings and hold them "to less stringent standards than those drafted by attorneys." Bieros v. Nicola, 839 F. Supp. 332, 334 (E.D.Pa. 1993). Claims by pro se litigants may be dismissed under Federal Rule of Civil Procedure 12(b)(6) 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." McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996)(quotations omitted); see also ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. ALA, Inc., 29 F.3d at 859.

II. DISCUSSION

Plaintiff's Complaint alleges that Defendants, both individually and acting in concert, deprived him of his constitutional right to be free from malicious prosecution and false imprisonment.¹ O'Connor and Stapp are public defenders

¹The Complaint states:

This is a civil action seeking special and general damages against defendants, and each of them, for committing acts, under color of law, which deprived plaintiff of rights secured under the Constitution and laws of the United States and for conspiring against the plaintiff for the purpose of impeding and hindering plaintiff's vested due course of justice with the **criminal intent** of denying the plaintiff equal

assigned to represent Plaintiff in the underlying state criminal proceedings. Plaintiff generally states that O'Connor and Stapp "allowed the continuation of criminal abuse against the plaintiff by the system." (Compl. ¶ XI). Specifically, the Complaint alleges that O'Connor and Stapp informed the two state court judges presiding at Plaintiff's proceedings that Plaintiff was mentally ill and did not understand the charges against him. Also, according to Plaintiff, O'Connor and Stapp failed to fulfill an alleged fiduciary duty to report civil rights abuses perpetrated against Plaintiff to the Department of Justice or Federal Bureau of Investigations.

Reading Plaintiff's allegations broadly, the Court construes the Complaint to allege claims under 42 U.S.C. § 1983 and Pennsylvania state law for malicious prosecution and false imprisonment, and claims for conspiracy under 42 U.S.C. § 1985(3) and state law.

A. Section 1983 Claims

42 U.S.C. § 1983 provides a remedy against "any person" who, under the color of law, deprives another of his constitutional rights. 42 U.S.C. § 1983 (1994); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). The Court dismisses Plaintiff's claims under section 1983 with prejudice against

protection of the laws and for refusing and neglecting to prevent such deprivations and denials to the plaintiff, Walter S. Mintz, III.
(Compl. ¶ II)(emphasis in original).

O'Connor and Stapp because public defenders are not state actors for the purposes of section 1983. Polk County v. Dodson, 454 U.S. 312, 319 (1981); Williams v. Dark, 844 F. Supp. 210, 213 (E.D.Pa.), aff'd, 19 F.3d 645 (3d Cir. 1994).

While municipal entities and agencies are "persons" liable under section 1983, they may not be held liable for injuries inflicted solely by their employees or agents on a respondeat superior theory of liability. Monell v. Dep't of Social Services, 436 U.S. 658, 688-91 (1978). Rather, municipalities may be held liable for violations of constitutional rights under section 1983 in only two circumstances. One situation is when the alleged unconstitutional action implements a municipal policy or practice, or a decision that is officially adopted or promulgated by those whose acts may fairly be said to represent official policy. Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997)(citing Monell, 436 U.S. at 690-91 (1978)). Alternatively, a municipality may be held liable if it fails to properly train its employees, such that the failure amounts to deliberate indifference to the rights of persons with whom its employees come into contact. Id. at 145 (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989)).

Assuming for the purposes of this motion that the Public Defender's Office is a municipal entity liable under section 1983, the Court concludes that Plaintiff has failed to allege a viable Monell claim. The Complaint lacks any allegations that

O'Connor's or Stapp's actions implemented a policy or practice promoted by the Public Defender's Office, or were the result of any failure to train, discipline, or control. The Court, therefore, also dismisses with prejudice Plaintiff's claim under section 1983 against the Public Defender's Office.

B. Section 1985(3)

Since the Complaint includes several references to an alleged conspiracy, the Court infers a claim for conspiracy to deprive Plaintiff of his constitutional rights under 42 U.S.C. § 1985(3) (1994). Section 1985(3) creates a private right of action against persons who conspire "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3) (1994). A section 1985(3) conspiracy claim must be pled with factual specificity. Robinson v. McCorkle, 462 F.2d 111, 113-14 (3d Cir.), cert. denied, 409 U.S. 1042 (1972). To establish a claim under Section 1985(3), Plaintiff must plead the following elements: (1) a conspiracy; (2) for the purpose of depriving any person or class of person of equal protection of the laws or equal privileges and immunities; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." United Bhd. of Carpenters and Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-29 (1983).

Plaintiff fails to provide any facts that support his conspiracy theory. Plaintiff points out that O'Connor and Stapp told the presiding judges that Plaintiff was mentally ill. Even if true, this evidence is insufficient to prove the existence of a conspiracy. Likewise, a general allegation that O'Connor and Stapp allowed the prosecution against the Plaintiff to continue does not support the existence of a conspiracy. Furthermore, the Complaint lacks any facts concerning the Public Defender's Office. Any claim, therefore, under section 1985(3) against moving Defendants fails.

C. State Law Claims

To the extent that the Complaint asserts state law causes of action for malicious prosecution, false imprisonment or civil conspiracy, the Court finds that the Plaintiff fails to set forth a set of facts that would entitle him to relief against moving Defendants under any theory.

To sustain a cause of action for malicious prosecution, the plaintiff must allege the following elements: (1) the defendant initiated a criminal proceeding; (2) that ended in the plaintiff's favor; (3) without probable cause; and (4) the defendant acted maliciously or for a purpose other than bringing the defendant to justice. McKibben v. Schmotzer, 700 A.2d 484, 492 (Pa. Super. Ct. 1997)(citing Kelley v. Local Union 249, 544 A.2d 940, 941 (1988)). Plaintiff has not alleged any facts

indicating that the Public Defender's Office, O'Connor or Stapp initiated Plaintiff's prosecution, nor that any such prosecution resolved in Plaintiff's favor.

To state a claim for false imprisonment, the plaintiff must allege that he was unlawfully detained by the defendant. Renk v. Pittsburgh, 641 A.2d 289, 293 (Pa. 1994). In the case of a false arrest, the plaintiff must show that the defendants arrested him without probable cause. Clarke v. City of Philadelphia, No. CIV. A. 92-4700, 1994 WL 388559, at *12 n.13 (E.D.Pa. July 27, 1994); Valenti v. Sheeler, 765 F. Supp. 227, 231 (E.D.Pa. 1991). Similarly, the Complaint states no facts indicating that the moving Defendants participated in Plaintiff's arrest or detention.

Likewise, any claim for civil conspiracy fails. To prove a civil conspiracy, a plaintiff must show that "two or more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means." Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 472 (Pa. 1979). As stated previously, the Complaint lacks any facts tending to support the existence of a combination, agreement, or conspiracy.

In conclusion, the Court dismisses all claims for malicious prosecution, false imprisonment or conspiracy made pursuant to section 1983, section 1985(3), or Pennsylvania state law against the Office of the Public Defender of Schuylkill County, Michael O'Connor and Gregory Stapp. Having dismissed Plaintiff's claims

on the foregoing grounds, the Court declines to address Defendants' other arguments. Similarly, having dismissed all claims against moving Defendants, the Court denies Plaintiff's request for additional time to serve process. An appropriate Order follows.

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O R D E R

AND NOW, this day of March, 2000, upon consideration of Defendants' Motion to Dismiss (Doc. No. 10), Plaintiffs' Reply thereto (Doc. Nos. 11 and 13), and Defendants' Reply thereto (Doc. No. 12), **IT IS HEREBY ORDERED** that Defendant's Motion is **GRANTED**. Defendants Office of the Public Defender of Schuylkill County, Michael J. O'Connor, and Gregory Stapp are **DISMISSED** from this action.

BY THE COURT:

John R. Padova, J.