

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

WALTER S. MINTZ, III : CIVIL ACTION
: :
v. : :
: :
UNITED STATES OF AMERICA et al. : 99-5980

MEMORANDUM AND ORDER

J. M. KELLY, J.

APRIL , 2000

Presently before the Court are several motions to dismiss the complaint of the Plaintiff, Walter Mintz (“Mintz”). Mintz filed suit in this Court pursuant to 42 U.S.C. § 1983 (1994) and § 1986, alleging violations of his constitutional rights by, among others, the United States of America, the Honorable Edmund Ludwig (“Judge Ludwig”), Theodore Lorenz (“Lorenz”), the Office of the Public Defender of Schuylkill County (“Public Defender’s Office”), Michael O’Connor (“O’Connor”) and Gregory Stapp (“Stapp”).¹ Each of these defendants has filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the Defendants’ motions are granted.

I. BACKGROUND

This is a pro se action alleging violations of Mintz’s Fourth, Fifth and Fourteenth Amendment rights. He alleges that he was maliciously prosecuted and wrongfully imprisoned by the defendants during a 1997 state criminal prosecution.² Additionally, he avers that defendants

¹ Also named as defendants in this action are the Commonwealth of Pennsylvania, the Office of the Attorney General, Attorney General John Shellenberger, the County of Schuylkill, Schuylkill County Courthouse, Judge David Plachko, the Pottsville District Attorney’s Office, District Attorney Claude A. Lord Shields, the Pennsylvania State Police, Trooper David Wieseman and Judge P. J. Baldwin.

² While Mintz’s Complaint alleges that he was maliciously prosecuted and falsely imprisoned, the Court interprets these claims as factual examples of the alleged violations of his

O'Connor and Stapp, among others, neglected to prevent the violation of his constitutional rights in contravention of federal law. Finally, he alleges that Judge Ludwig, and therefore the United States, violated his constitutional rights by dismissing Mintz's first § 1983 action stemming from the prior criminal prosecution. Accordingly, he filed suit in this Court.

II. STANDARD OF REVIEW

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court may consider those facts alleged in the complaint as well as matters of public record, orders, facts in the record and exhibits attached to the complaint. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391 (3d Cir. 1994). The court must accept those facts as true. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Further, a pro se complaint is held to less stringent standards than the pleading of a represented party; it may be dismissed 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). Moreover, the complaint is viewed in the light most favorable to the plaintiff. See Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

constitutional rights, rather than as assertions of additional, individual, pendent state-law causes of action. Assuming, however, that Mintz intended to assert these state-law claims, the Court adopts the reasoning of Judge Padova in a related matter in dismissing these claims. See Mintz v. Pennsylvania, No. CIV. A. 99-3543, 2000 WL 348576, at *3 (E.D. Pa. Mar. 30, 2000).

Several defendants have moved to dismiss Mintz's claims against them. Their arguments are discussed in turn below.

A. United States of America

Mintz's claim against the United States seems to arise from the decision of Judge Ludwig, acting in his official capacity, to dismiss Mintz's first § 1983 claim. See Mintz v. Pennsylvania, No. CIV. A. 99-3543, 1999 WL 959819, at *1 (E.D. Pa. Oct. 14, 1999). Where a federal official is sued in his official capacity, the real party in interest is the United States. See Kentucky v. Graham, 473 U.S. 159, 166 (1985); Aziz v. Buckwalter, No. CIV. A. 98-6047, 1999 WL 239035, at *1 (E.D. Pa. Apr. 9, 1999). The doctrine of sovereign immunity, however, bars suits against the United States unless it has expressly consented to be sued. See United States v. Mitchell, 463 U.S. 206, 212 (1983). Mintz has not argued, nor does the Court find, that the United States has waived its sovereign immunity. Accordingly, the United States's motion to dismiss is granted.

B. Judge Ludwig

Similar to his claim against the United States, Mintz's claim against Judge Ludwig stems from his dismissal of the first § 1983 action. In the Complaint, Mintz alleges "[t]hat Judge Ludwig intentionally jeopardized plaintiff's 14th Amendment right to procedural due process for the personal gain and advantage of the defendants." Complaint ¶ XIV, at 5. As noted above, however, Mintz's claim against Judge Ludwig in his official capacity is actually a claim against the United States, which is barred by the doctrine of sovereign immunity. Therefore, Judge Ludwig's motion to dismiss is also granted.

C. Theodore Lorenz

The Complaint also alleges that Lorenz, a Deputy Attorney General for the Commonwealth of Pennsylvania, violated Mintz's rights in that he "unduly influenced Judge Ludwig to fix plaintiff's case . . . for the purpose of covering the crimes that defendants perpetrated against the plaintiff and so that defendants could escape liability to the plaintiff." Complaint ¶ XVII, at 5 (emphasis omitted). Mintz seems to be referring to a motion to dismiss filed by Lorenz on behalf of the Commonwealth of Pennsylvania in the matter before Judge Ludwig. This allegation, however, fails to set forth a viable claim under § 1983.

Section 1983 authorizes a cause of action against a "person who, under color of [state law], subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States." 42 U.S.C. § 1983. Mintz claims that Lorenz, while acting in his official capacity as Deputy Attorney General, violated his constitutional rights. The Supreme Court has held, however, that a state and its agencies and officials acting in their official capacity are not "persons" under § 1983 and are therefore not subject to liability. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Accordingly, Lorenz, acting in his official capacity, is not subject to suit under § 1983. Furthermore, Lorenz is entitled to absolute immunity for his actions on behalf of the Commonwealth of Pennsylvania. See, e.g., Imbler v. Pachtman, 424 U.S. 409, 430 (1976); Ernst v. Child & Youth Servs., 108 F.3d 486, 494-96 (3d Cir. 1997); Seymour/Jones v. Shellenberger, Civ. A. No. 96-5673, 1997 WL 9793, at *2 (E.D. Pa. Jan. 8, 1997). Therefore, his motion to dismiss is granted.

D. Public Defender's Office, Michael O'Connor and Gregory Stapp

It appears from the Complaint that O'Connor and Stapp, public defenders for Schuylkill

county, represented Mintz during his prior criminal prosecution. Mintz alleges that both O'Connor and Stapp informed the various trial judges that he was mentally ill and that he did not understand the charges against him, yet the judges "ignored the public defender and went on to prosecute the plaintiff constituting human rights abuses and oppression under color of law." Complaint ¶ X, at 4. O'Connor and Stapp are liable, according to Mintz, because they both allowed the prosecution to continue and failed to report the alleged civil rights abuses being perpetrated against Mintz to the proper authorities. See id. ¶¶ XI-XII, at 4. His claims, therefore, are variously brought under § 1983 and § 1986.

As discussed above, § 1983 authorizes a cause of action against persons acting under color of state law who deprive an individual of his or her constitutional rights. Mintz claims that O'Connor and Stapp violated his constitutional rights by failing to prevent his criminal prosecution. As public defenders, however, O'Connor and Stapp are not persons acting under color of state law for the purposes of § 1983. See, e.g., Polk County v. Dodson, 454 U.S. 312, 325 (1981); Williams v. Dark, 844 F. Supp. 210, 213 (E.D. Pa. 1993), aff'd, 19 F.3d 645 (3d Cir. 1994). Therefore, they cannot be liable under § 1983 and the claims against them are dismissed.

Similarly, Mintz has not stated a viable claim for relief against the Public Defender's Office. The Complaint makes no direct mention of the Public Defenders' Office. A liberal reading, however, leads the Court to believe Mintz alleges a respondeat superior theory of liability. It is well-settled, however, that in § 1983 actions, a government entity is not vicariously liable for the actions of its employees; liability under § 1983 requires direct involvement in the violation of constitutional rights. See Polk County, 454 U.S. at 326; Monell v. Department of Soc. Servs., 436 U.S. 658, 688-91 (1978). In the case of government agencies, this means that

liability arises only when the constitutional deprivation arises from an official custom or policy or a failure to train, discipline or control its employees amounting to deliberate indifference to the rights of the individuals with whom the employees have contact. See Monell, 436 U.S. at 690-91; City of Canton v. Harris, 489 U.S. 378, 388 (1989); Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997). A generous reading of the Complaint reveals no such allegations were made against the Public Defenders' Office. Accordingly, its motion is granted as to this matter.

Turning to Mintz's § 1986 claim, he again fails to state facts alleging a viable cause of action. Section 1986 is a corollary to § 1985 which authorizes a suit for conspiracy to interfere with civil rights. See 42 U.S.C. § 1985 (authorizing claim for conspiracy to deprive individual of constitutional rights); id. § 1986 (authorizing action for knowingly neglecting to prevent conspiracy in violation of § 1985). While Mintz does not specifically mention § 1985 in his Complaint, he does generally aver that all of the defendants conspired with one another to deprive him of his constitutional rights. See Complaint ¶ V, at 3. He alleges O'Connor and Stapp violated § 1986 by neglecting to prevent those violations. Even under the liberal pleading standards afforded pro se plaintiffs, however, Mintz fails to allege a cause of action. His general allegation of a conspiracy is insufficient to meet the requirement that § 1985 claims be plead with factual specificity. See Robinson v. McCorkle, 462 F.2d 111, 113-14 (3d Cir. 1972). Accordingly, the motion to dismiss on behalf of O'Conner, Stapp and the Public Defenders' Office is granted in its entirety.

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ORDER

AND NOW, this day of April, 2000, in consideration of the Motions to Dismiss filed, respectively, by the Defendants, the United States of America (Doc. No. 7), the Honorable Edmund Ludwig (Doc. No. 6), Theodore Lorenz (Doc. No. 3) and the Office of the Public Defender of Schuylkill County, Michael O'Connor and Gregory Stapp (Doc. No. 5), it is ORDERED that:

- (1) The United States of America's motion is GRANTED. Walter Mintz's Complaint against the United States of America is DISMISSED.
- (2) The Honorable Edmund Ludwig's motion is GRANTED. Walter Mintz's Complaint against Edmund Ludwig is DISMISSED.
- (3) Theodore Lorenz's motion is GRANTED. Walter Mintz's Complaint against Theodore Lorenz is DISMISSED.

(4) The Office of the Public Defender of Schuylkill County, Michael O'Connor and Gregory Stapp's motion is GRANTED. Walter Mintz's Complaint against the Office of the Public Defender of Schuylkill County, Michael O'Connor and Gregory Stapp is DISMISSED.

BY THE COURT:

JAMES McGIRR KELLY, J.