

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

SEAN BURKE : CIVIL ACTION
 :
 v. :
 :
 LEON DARK, et al. : NO. 00-CV-5773

MEMORANDUM

Padova, J. **March** , **2001**

Plaintiff filed the instant suit against Defendants Leon Dark, Claude Harrison, Veronica Sablosky, Vivian Price, Vivian Miller, Janet Dowds, Kevin Flanagan, Charles Epps, Robin Miller, and Carolyn Friend pursuant to 42 U.S.C. § 1983, alleging improper failure to timely provide trial transcripts that he had requested. Before the Court is a Motion to Dismiss Plaintiff’s Complaint filed by Defendants Vivian Miller, Janet Dowds, Kevin Flanagan, Charles Epps, Robin Miller, and Carolyn Friend (collectively “Moving Defendants” or “Movants”). For the reasons that follow, the Court grants the Motion and dismisses all claims against Movants.

I. BACKGROUND

Plaintiff, Sean Burke, is an inmate at a state correctional institute. Movants occupy the following positions in the Pennsylvania state judicial system: Vivian Miller is a clerk for the Clerk of Quarter Sessions; Janet Dowds (“Dowds”) is deputy court administrator at the Court of Common Pleas Court Reporters and Interpreters; Kevin Flanagan (“Flanagan”) is a court reporter for the Court of Common Pleas; Charles Epps (“Epps”) is a clerk in the Prison Liaison Unit of the Clerk of Quarter Sessions; Robin Miller is an executive assistant at the Clerk of Quarter Sessions; and Carolyn Friend (“Friend”) is a clerk at the Criminal Justice Center.

The Complaint and attached exhibits contain the following allegations with respect to

Moving Defendants.¹ Between May 1999, and August 2000, Plaintiff repeatedly requested from Moving Defendants trial and hearing transcripts as well as other materials from state court case C.P. 8807-2731, but did not receive the requested transcript until August 4, 2000. On June 25, 1999, Plaintiff filed with the Court of Common Pleas a motion for partial transcription of the proceedings in C.P. 8807-2731 along with a money order for \$100.00 made out to Vivian Miller. He received no response nor was his money order returned. On February 17, 2000, he sought a writ of mandamus against the Court of Common Pleas for its delay in resolving his motion. The Pennsylvania Supreme Court denied his petition on July 14, 2000.

On April 3, 2000, Plaintiff wrote to Dowds seeking the transcripts. In response, Dowds instructed Plaintiff either to obtain the transcripts from his counsel or, if he is proceeding pro se, to enclose a copy of a court order permitting him to proceed pro se. Following receipt of these instructions, on May 18, 2000, Plaintiff again wrote to Dowds arguing that he should be given the transcripts without a court order and stating that his former attorney did not have the transcripts. Between April 17, 2000, and May 23, 2000, Plaintiff sent requests for transcripts to Flanagan, Robin Miller, and Epps, all of whom failed to respond. On June 12, 2000, Plaintiff again wrote to Flanagan requesting the transcripts and enclosing a letter from Judge Frederica Massiah-Jackson of the Court of Common Pleas stating that Burke was proceeding in forma pauperis and should be given a transcript. On August 4, 2000, Plaintiff finally received the sought transcripts for C.P. 8807-2731.

Plaintiff argues that Movants' delay in providing the requested transcripts was unwarranted and hindered his efforts to support his petition for post-conviction relief filed pursuant to 42 Pa. Cons. Stat. § 9541, et seq. Plaintiff seeks compensatory damages of \$175,000.00, punitive damages of \$ 80,000.00, and discovery materials from the preliminary hearing of C.P. 8807-2731.

¹The Complaint contains additional allegations with respect to other non-moving Defendants.

II. LEGAL STANDARD

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 accept all of the allegations made in the Complaint as true. ALA, Inc., 29 F.3d at 859.

Generally, district courts ruling on motions to dismiss may not consider matters extraneous to the pleadings. In re Burlington Coat Factory Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). The court, however, may consider documents that are “integral to or explicitly relied upon in the complaint” without converting the motion into one for summary judgment. Id. Affirmative defenses may be raised on a 12(b)(6) motion “where the defect appears on the face of the pleading.” Continental Collieries v. Shober, 130 F.2d 631, 635-36 (3d Cir.1942).

III. DISCUSSION

Plaintiff brings suit under 42 U.S.C. § 1983, a federal statute that 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). To establish a claim under § 1983, a plaintiff must allege (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997). Plaintiff claims that Movants’ delay in providing him with the requested transcripts and materials violated his rights under the First, Fifth, Sixth, and Fourteenth Amendments

to the United States Constitution. Movants seek dismissal of Plaintiff's claims against them on the ground of qualified immunity, judicial immunity, and failure to demonstrate any injury resulting from the alleged misconduct.

The Court initially notes that § 1983 requires allegations that the defendant personally participated, directed, or knowingly acquiesced in the alleged constitutional deprivation. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3rd Cir. 1988). The Complaint states no allegations of Defendant Friend's personal involvement in the alleged deprivation, but rather seeks to attach liability based solely upon her employment in the Prison Liaison Unit of the Clerk of Quarter Sessions. (Compl. ¶ 28.) Since specific allegations of her personal participation are lacking, the Court dismisses Friend from the action.

The Complaint also purports to sue Movants in their individual and official capacities. (Compl. at 1.) The Eleventh Amendment bars § 1983 claims against state entities and state officials sued in their official capacities. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). State officials sued in their official capacities are not "persons" as defined in § 1983. Id. The Court, therefore, dismisses all claims against Movants in their official capacities. The Court next turns to Movants' argument that they are entitled to qualified immunity on claims made against them in their individual capacities.

Government officials have qualified immunity from suit under §1983 so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Thus, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). The defendant has the burden of pleading and proving qualified immunity. Harlow, 457 U.S. at 815.

When resolving issues of qualified immunity, the court must first determine whether the plaintiff has alleged a deprivation of a constitutional right. Torres v. McLaughlin, 163 F.3d 169, 172 (3d Cir.1998) (internal citations omitted). Only after satisfying that inquiry should the court then ask whether the right allegedly implicated was clearly established at the time of the events in question. Id. If the plaintiff successfully alleges a deprivation of a constitutional right that was clearly established at the time of the events in question, the salient question becomes whether the defendant's conduct was objectively reasonable in light of pre-existing law as measured by the amount of knowledge available to the official at the time of the alleged violation. Anderson v. Creighton, 493 U.S. 635, 649 (1987); Giuffre v. Bissell, 31 F.3d 1241, 1252 (3d Cir. 1994).

The Court need not reach the issue of whether an implicated right was clearly established at the time of the events in question because the Complaint fails to allege deprivation of a constitutional right. In a direct appeal of a state conviction, an indigent criminal defendant is entitled to a free transcript as a matter of right, without any showing of the merit of his appeal. Griffin v. Illinois, 351 U.S. 12 (1956). There is no right to a free transcript for collateral challenges to a state conviction, however, absent a showing of need for the transcript through a court order. Rausser v. Goldy, No. Civ.A.87-6045, 1988 WL 117961, at *1 (E.D. Pa. Oct. 31, 1988); see also United States v. MacCollum, 426 U.S. 317, 324-25 (1976); 42 Pa. Cons. Stat. § 9545(d)(2). The Complaint claims that Plaintiff sought transcripts to collaterally challenge his state conviction under the Pennsylvania Post-Conviction Relief Act, 42 Pa. Cons. Stat. § 9541, and admits that Plaintiff did not submit a letter or order from the court with his request for transcripts until June 12, 2000. (Compl. ¶¶ 2, 3, 24.) Before June 12, 2000, therefore, Plaintiff's submissions demonstrated no established right to a free transcript and Defendants Vivian Miller, Dowds, Robin Miller, and Epps were not legally obligated to provide a transcript in response to such requests. Since their conduct did not violate any

clearly established statutory or constitutional right, Defendants Vivian Miller, Dowds, Robin Miller, and Epps are entitled to qualified immunity. Once Plaintiff submitted a court order with his request for transcripts to Flanagan, Flanagan complied and provided Plaintiff with the requested transcript. Flanagan's conduct, therefore, did not violate any clearly established right. Accordingly, Flanagan is also entitled to qualified immunity.

IV. CONCLUSION

For the foregoing reasons, the Court determines that Defendants Vivian Miller, Janet Dowds, Kevin Flanagan, Charles Epps, and Robin Miller are entitled to qualified immunity from Plaintiff's claims made against them in their individual capacities. Furthermore, all claims against them in their official capacities are dismissed. The Court also dismisses Plaintiff's claims against Carolyn Friend since the Complaint lacks any allegations of personal conduct. Having resolved the Motion on these grounds, the Court declines to address Movants' other arguments. An appropriate Order follows.