

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

FELIX FORCADES : CIVIL ACTION
 :
 v. :
 :
 KEVIN FEENEY, A.P.D., et al. : NO. 04-4316

M E M O R A N D U M

LUDWIG, J. NOVEMBER , 2004

Plaintiff, a prisoner, has filed a pro se civil rights complaint against his public defender, the Chief Public Defender in Berks County, Pennsylvania and the Berks County Public Defender's Office. He is alleging, in essence, that he is not receiving adequate representation in his criminal case.

With his complaint, plaintiff filed a request for leave to proceed in forma pauperis, which is hereby granted. However, plaintiff's complaint will be dismissed as legally frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), for the reasons which follow.

I. DISCUSSION

A. Claims under 42 U.S.C. § 1983

In order to bring suit under § 1983, plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993) (listing elements of a § 1983 claim). The Supreme Court has determined 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." See Polk County v. Dodson, 454 U.S. 312, 325 (1981) (footnote

omitted). Since a public defender does not act under color of state law, the defendants may not be sued under § 1983. Although plaintiff is not satisfied with the representation that he is receiving from his public defender, the relief he seeks is not available to him in a civil rights action in this Court.

B. Claims under 42 U.S.C. §§ 1981, 1985 and 1986

Plaintiff does not allege that any of the defendants' actions were motivated by racial or class-based animus or that there has been an interference with a private contract or with federal officials or federal court proceedings which is necessary to bring an action under 42 U.S.C. §§ 1981 and 1985. See Rivers v. Roadway Exp., Inc., 511 U.S. 298 (1994); Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993); Kush v. Rutledge, 460 U.S. 719, 724-25 (1983); Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976). Without a § 1985 claim, there can be no claim under 42 U.S.C. § 1986. Id. at 841. Therefore, plaintiff's claims under 42 U.S.C. §§ 1981, 1985 and 1986 will be dismissed as frivolous.

C. Claims Under 42 U.S.C. § 1997d

Plaintiff is also attempting to bring this action under 42 U.S.C. § 1997d. However, his complaint does not contain any allegations that would allow this court to find that he is a victim of retaliation for reporting conditions which violate the "Civil Rights of Institutionalized Persons Act", 42 U.S.C. § 1997, et seq. Accordingly, plaintiff's claims under 42 U.S.C. § 1997d will also be dismissed as frivolous.

II. CONCLUSION

Plaintiff has advanced an "indisputably meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 327 (1989). Accordingly, dismissal of this complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) is appropriate. An order dismissing this complaint follows.

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O R D E R

AND NOW, this day of November, 2004,

IT IS ORDERED that:

1. Leave to proceed in forma pauperis is GRANTED.
2. This action is **DISMISSED AS FRIVOLOUS** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), for the reasons stated in the accompanying memorandum filed this day.

AND IT IS SO ORDERED.

BY THE COURT:

EDMUND V. LUDWIG, J.