

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

THOMAS E. HELT : CIVIL ACTION
: :
: :
v. : :
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: :
TRAINER POLICE DEPT. K9, et al. : :
: : NO. 04-4334

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J,

April 26, 2005

Thomas Helt ("Helt"), a state prisoner, has filed a series of *pro se* complaints against various police departments and officers, including Trainer Police Department, Aston Police Department and Upper Chichester Police Department. Before the Court is Helt's petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. This Court has a duty under 28 U.S.C. § 1915A to review, before docketing, a civil complaint by a prisoner against governmental entities or employees or officers of a governmental entity. The complaint should be dismissed if frivolous or if it seeks monetary relief from defendants immune from relief.¹

¹ The text of 28 U.S.C. §1915A reads as follows:

(a) Screening. The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal. On review, the court shall

First, Helt claims Officers Massy and Fuller as well as 12-15 additional officers used excessive force to arrest him. Helt claims he was sleeping in his home when the officers dragged him 150 feet from the house while executing a search warrant relating to a theft in Aston, PA; he was then beaten and bitten by a K9 dog during this police encounter.

Helt also claims there was no probable cause for two of his Driving Under the Influence of alcohol ("DUI") arrests, his religious beliefs were violated when he was forced to undergo blood testing after his DUI arrests, the blood tests performed after his DUI arrests were tainted, and the police used a juvenile informant to entrap him. Helt further claims that a judge violated Helt's due process rights because witnesses were not permitted to testify at Helt's preliminary hearing in Lima District Court.

identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint -
(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition. As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S.C. §1915A

Finally, Helt alleges ineffective assistance of counsel and challenges the constitutionality of 75 Pa. C.S.A. §3802A of Pennsylvania's Motor Vehicle Code.

I. Discussion

A. Exhaustion of State Remedies Under 28 U.S.C. § 2254

A federal court may grant a Writ of Habeas Corpus only if all state remedies have been exhausted. 28 U.S.C. § 2254(b)(1)(A). The burden is on the petitioner to prove exhaustion. See *Coady v. Vaughn*, 251 F.3d 480, 488 (3d Cir. 2001). "[I]n cases where there is any doubt about the availability of a state remedy, the claim must be dismissed." *Id.* at 489 (citing *Lines v. Larkins*, 208 F.3d 153, 163 (3d Cir. 2000)). There is exhaustion of state remedies if there has been a fair presentation of the federal claim to the highest state court. See *Picard v. Connor*, 404 U.S. 270, 275 (1971) (citing *Wilwording v. Swenson*, 404 U.S. 249, 250 (1971)); see also *Toulson v. Breyer*, 987 F.2d 984, 987 (3d Cir. 1993). In addition to directly appealing a state conviction to the highest court in the state in order to exhaust state remedies, a Pennsylvania petitioner can utilize a collateral proceeding under the Post-Conviction Relief Act ("PCRA") of 1995. See *Lambert v. Blackwell*, 134 F.3d 506, 519 (3d Cir. 1997) (describing collateral review under PCRA). Helt has not established exhaustion of his state remedies so that a federal court cannot

consider his habeas petition at this time.² Helt's petition for a Writ of Habeas Corpus is dismissed without prejudice.³

B. Claims Under 42 U.S.C. §1983

If Helt seeks damages rather than his release, he can bring an action under 42 U.S.C. §1983.⁴ The court will deem his

² In *Helt v. Nardillo*, 2005 WL 807015, Helt brought a *pro se* petition for a Writ of Habeas Corpus under 28 U.S.C. §2254 before Judge Rufe in the Eastern District of Pennsylvania citing similar events to those in this petition. The petition challenged his convictions on charges of resisting arrest, driving under the influence of alcohol and other traffic offenses. Judge Rufe denied the petition because Helt had not exhausted state remedies.

³ The court declines to deem Helt's filing a petition for writ of habeas corpus and stay the petition under *Rhines v. Weber*, 125 S.Ct. 1528 (2005) because it is unclear that any of Helt's claims were exhausted. Helt can repetition for a writ of habeas corpus if he exhausts his claims in state court before the statute of limitations runs.

⁴The text of the statute states the following:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

petition a 42 U.S.C. §1983 action because Helt originally had filed this action under 42 U.S.C. §1983 with amended complaints based on similar allegations to those in the petition before the court. Helt has paid the requisite filing fee for a 42 U.S.C. §1983 action.

As a 42 U.S.C. §1983 action, Helt's claim of excessive force by the police may survive a motion to dismiss. Officers Massy and Fuller are mentioned in the complaint, but Helt must specifically mention the other officers involved as well as each officer's police department to hold any other officers liable. Helt may file an amended complaint to name all other defendants allegedly liable for use of excessive force.

Helt's claims regarding violation of his religious beliefs are barred by *Employment Division, Department of Human Resources of Oregon, et al. v. Smith*, 494 U.S. 872 (1990). In *Employment Division*, the Supreme Court held that valid laws of general applicability do not violate the Free Exercise Clause when they regulate activity a person's religious beliefs prohibit or require; a state is free to regulate conduct proscribed by laws of non-discriminatory application. See *Employment Div.*, 494 U.S. at 878-79. As long as prohibiting the exercise of religion is not the purpose of the state action or prohibition, the Free Exercise Clause of the First Amendment is not violated. See *id.* at 878. Here, the blood tests were to determine if Helt's blood

alcohol level exceeded the legal blood alcohol limit. Blood testing of one arrested for driving while intoxicated is standard procedure serving to regulate drunk driving; it is not used to prohibit religious observance.

Pennsylvania law regarding chemical testing to determine the amount of alcohol in a person's system is governed by 75 Pa. C.S.A. 1547; a person is deemed to have given consent to blood testing if the officer had reasonable grounds to believe the person was driving under the influence of alcohol. See 75 Pa. C.S.A. §1547(a)(1). The law also states that if a driver refuses, he should not be forced to submit to chemical testing; the driver's operating privilege will be suspended instead. See 75 Pa. C.S.A. §1547(b). Pennsylvania's law of general applicability permitting blood testing of DUI arrestees is valid; it does not violate Helt's rights under the Free Exercise Clause because the law regulates conduct a state is permitted to regulate. Helt had a right to refuse testing; his religious rights were not violated because he was given the opportunity to refuse.

"Even a prisoner who has fully exhausted available state remedies has no cause of action under §1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck v.*

Humphrey, 512 U.S. 477, 489 (1994). In *Heck*, the petitioner, in prison for voluntary manslaughter, filed a 42 U.S.C. §1983 action seeking damages against prosecutors and police investigator for complaints about the investigation leading to his arrest and conviction. See *id.* at 479. The Supreme Court upheld the dismissal of the action because it challenged the legality of his conviction. See *id.* at 490.

[W]hen a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 487 (1994).

Here, Helt claims there was no probable cause for his DUI arrests; establishing no probable cause would invalidate his DUI convictions. There is no allegation his convictions have been invalidated so this claim is barred. Helt's claims that his blood tests were tainted and a juvenile informant was used to entrap him also attack his state court DUI convictions; they also are barred. Helt's claim that his right to have witnesses testify at his preliminary hearing in Lima District Court was violated is barred because a judgment in favor of Helt on this

issue would necessarily imply the invalidity of his state court convictions. Finally, Helt's claims of ineffective assistance of counsel and the unconstitutionality of 75 Pa. C.S.A. 3802 are barred because they too challenge his state court convictions.

Claims attacking Helt's state court convictions are barred unless his convictions are "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck*, 512 U.S. at 489. Helt's convictions have not been reversed; his claims under 42 U.S.C. §1983 are barred.⁵

II. Conclusion

Helt's petition for a Writ of Habeas Corpus will be deemed a complaint under 42 U.S.C. §1983 because Helt has not alleged he has exhausted state remedies as required by 28 U.S.C. §2254(b)(1)(A). Helt's claim of excessive force under 42 U.S.C. §1983 would survive a motion to dismiss only as to Officers Massy and Fuller who were named; Helt may amend his complaint to name any other officers involved in the alleged excessive force incident. Helt's claims regarding violation of his religious beliefs, lack of probable cause for his DUI arrests and violation of his rights when witnesses were not permitted to testify at his preliminary hearing will be dismissed as frivolous under 28 U.S.C. §1915A.

⁵Helt cannot assert lack of probable cause for any unreversed conviction that was not obtained by fraud. *See Heck v. Humphrey*, 512 U.S. 477, 486 n.4 (1994).

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NO. 04-4334
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ORDER

____ AND NOW, this 26th day of April, 2005, it appearing that:

A. Helt alleges police dragged him 150 feet from his father's home while executing a search warrant relating to a theft in Aston. Helt alleges he was beaten and bitten by a K-9 dog during this police encounter.

B. Helt alleges there was no probable cause for two of his DUI offenses.⁶

C. Helt alleges that blood tests performed on him during his DUI arrests were tainted. Additionally, Helt claims that the police used a juvenile informant to entrap him.

⁶ Helt cannot assert lack of probable cause for any unreversed conviction that was not obtained by fraud. *See Heck v. Humphrey*, 512 U.S. 477, 486 n.4 (1994).

D. Helt claims that a judge violated Helt's due process rights because witnesses were not permitted to testify at Helt's preliminary hearing in Lima District Court.

E. Helt claims his religious beliefs were violated when he was forced to undergo blood testing.

F. Helt claims ineffective assistance of counsel and challenges the constitutionality of 75 Pa. C.S.A. §3802.

It is hereby **ORDERED** that:

1. Helt's complaint is **DEEMED** a 42 U.S.C. §1983 action and not a petition for a Writ of Habeas Corpus under 28 U.S.C. §2254 because he has not shown exhaustion of state remedies as required by 28 U.S.C. §2254(b)(1)(A).⁷

2. Helt may bring claims regarding violation of his religious beliefs under 42 U.S.C. §1983, but Helt's particular allegations are dismissed as frivolous. See *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878-79 (1990).

3. All other claims under 42 U.S.C. §1983 other than those of excessive force are **DISMISSED** as frivolous. See *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

4. Claims of excessive force against Officers Massy and Fuller may proceed under 42 U.S.C. §1983. Helt is granted **LEAVE TO AMEND** his complaint to assert claims of excessive force only. Helt must file an amended complaint within forty-five days.

5. If this action were considered as a petition for a Writ of Habeas Corpus instead of an action under 42 U.S.C. §1983 and dismissed for failure to exhaust state remedies, there would be no basis for granting a certificate of appealability.

⁷ The court declines to deem Helt's filing a petition for writ of habeas corpus and stay the petition under *Rhines v. Weber*, 125 S.Ct. 1528 (2005), because it is unclear that any of Helt's claims were exhausted. Helt can repetition for a writ of habeas corpus if he exhausts his claims in state court before the statute of limitations runs.

/s/ Norma Shapiro

Norma L. Shapiro, S.J.