

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

FRED LAWTON : CIVIL ACTION
 :
v. :
 :
OFFICER JOSEPH O'NEILL, et al. : NO. 15-0146

M E M O R A N D U M

JOYNER, J.

FEBRUARY 9, 2015

Plaintiff, a prisoner, has filed a pro se 42 U.S.C. § 1983 civil rights lawsuit against Montgomery County, Pennsylvania, the Montgomery County District Attorney and an Assistant District Attorney, the Chief of the Cheltenham Police Department and a police officer. He alleges that Officer O'Neill filed a false police report against him and provided false testimony in plaintiff's criminal trial.

For the following reasons, plaintiff's claims will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

Municipal liability cannot be imposed absent an allegation that unlawful actions were taken pursuant to a municipality's policies, practices, customs, regulations or enactments. Monell v. Department of Social Services, 436 U.S. 658 (1978). There is no such allegation in the present complaint. Therefore, the claims against Montgomery County will be dismissed.

The doctrine of absolute immunity shields prosecutors from liability related to their official acts. Imbler v. Pachtman, 424 U.S. 409 (1976). A prosecutor is absolutely immune from liability for money damages under § 1983 for acts "within the scope of his duties in initiating and pursuing a criminal

prosecution." Id. at 410. Plaintiff's claims against District Attorney Risa Vetri Ferman and Assistant District Attorney Matthew W. Quigg will be dismissed because there is nothing in the complaint to suggest that they acted outside of the scope of their prosecutorial duties in connection with plaintiff's criminal case.

Plaintiff's claims against Chief Norris of the Cheltenham Police Department will also be dismissed. The mere fact that he is Officer O'Neill's boss is insufficient to state a colorable constitutional violation as there is no respondeat superior liability in § 1983 cases. Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976).

Finally, plaintiff appears to be alleging that he has been imprisoned because of Officer O'Neill's police report and his testimony in plaintiff's criminal case. However, "to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus[.]" Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnote and citation omitted). Plaintiff is seeking damages for constitutional violations that, if proven, would necessarily render his conviction and related imprisonment invalid. However, he does not state that his

conviction has been reversed or otherwise invalidated.

Furthermore, a witness, governmental or otherwise, may not be sued under 42 U.S.C. § 1983 for damages. Briscoe v. LaHue, 460 U.S. 325 (1983).

A district court should generally provide a pro se plaintiff with leave to amend unless amendment would be inequitable or futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002). Here, plaintiff will not be given leave to amend because amendment would be futile, as he cannot cure the above deficiencies in his complaint.

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O R D E R

AND NOW, this 9th day of February 2015, IT IS ORDERED
that:

1. Leave to proceed in forma pauperis is GRANTED;
2. Plaintiff, Fred Lawton, #LJ8729, shall pay the full filing fee of \$350 pursuant to 28 U.S.C. § 1915(b). Based on plaintiff's financial statement, an initial partial filing fee of \$10.00 is assessed. The Superintendent or other appropriate official at SCI Somerset or at any other correctional facility at which plaintiff may be confined, is directed to deduct \$10.00 from plaintiff's prisoner account, when such funds become available, and forward that amount to the Clerk of the United States District Court for the Eastern District of Pennsylvania, 2609 U.S. Courthouse, Philadelphia, PA 19106, to be credited to Civil Action No. 15-0146. After the initial partial filing fee is collected and until the full filing fee is paid, the Superintendent or other appropriate official at SCI Somerset or at any prison at which plaintiff may be confined, shall deduct from plaintiff's account, each time that plaintiff's prisoner account exceeds \$10, an amount no greater than 20 percent of the money credited to his account during the preceding month and forward that amount to the Clerk of Court at the address provided

above to be credited to Civil Action No. 15-0146;

3. This complaint is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(i);

4. The Clerk of Court is directed to send a copy of this Order to the Superintendent of SCI Somerset; and

5. The Clerk of Court shall CLOSE this case.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.