

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

_____	:	
KEITH M. BENNETT,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 97-3555
	:	
JUDGE EUGENE E. MAIER, et al.	:	
	:	
Defendants.	:	
_____	:	

MEMORANDUM

KELLY, R.F.

NOVEMBER , 1997

Plaintiff, Keith M. Bennett, an inmate incarcerated at SCI Cresson, has filed a pro se complaint alleging violations of 42 U.S.C. § 1983 against various Defendants. The Defendants include two state court judges, two attorneys, two psychologists, one counselor and the superintendent of SCI Cresson. Plaintiff seeks injunctive and monetary relief.¹ Four of the Defendants have moved to dismiss Plaintiff's Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure.

Specifically, the Honorable Eugene E. Maier and the Honorable Steven R. Geroff, have moved to dismiss Plaintiff's claims against them based on Federal Rules of Civil Procedure 12 (b)(1), (5) and (6). Defendant James Garrett, Esquire, the attorney who represented Plaintiff during his criminal trial, has likewise moved to dismiss the claims against him pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant John

In the complaint Plaintiff states that he would also appreciate his "freedom," however, in response to Judges Maier and Geroff's Motion to Dismiss Plaintiff indicates that such relief is no longer requested.

Armstrong, Esquire, an attorney who represented Plaintiff during a parole hearing, has similarly moved for dismissal under Rule 12(b)(6) or in the alternative, for a more definitive statement pursuant to Rule 12(e).² For the reasons that follow, the Defendants' Motions to Dismiss are granted.

I. INTRODUCTION.

Plaintiff's pro se complaint is, at best, difficult to follow. It is neatly handwritten but riddled with misspelled words. The sentences do not fit together in any logical sequence and nonsensical phrases are repeated throughout the document. Plaintiff has filed Responses to each of the Defendants' Motions to dismiss. These responses shed some light on the meaning behind Plaintiff's claims.

We must give the Complaint a "liberal" interpretation keeping in mind the fact that pro se pleadings "are held to less stringent standards than those drafted by attorneys.". Bieros v. Nicola, 839 F. Supp. 332, 334 (E.D. Pa. 1993). Plaintiff's responses to the pending Motions for dismissal indicate that his claims arise under 42 U.S.C. § 1983. Additionally, each Defendant has approached the Complaint as alleging a violation of section 1983. Thus, the Court will treat Plaintiff's claims as such.

II. FACTS.

Plaintiff alleges that his civil rights were violated

² Because we are granting the motions to dismiss, Armstrong's 12(e) motion will be denied.

during a state court criminal proceeding in October 1996. Judge Maier presided over this proceeding, and Plaintiff was represented by Defendant James Garrett, Esq.

During his criminal trial, Plaintiff alleges that Judge Maier treated him "unethically" by twice ordering the jury to continue deliberations when they were unable to reach a verdict. Further, Plaintiff alleges that after the jury reached a verdict the parties were required to wait for the courtroom stenographer. While waiting, Plaintiff stresses the fact that Judge Maier was "off the bench." Apparently, Judge Maier dismissed the jury and waited until the next day to record the guilty verdict. Plaintiff maintains this conduct violated his civil rights.

Plaintiff claims his defense attorney, Defendant James Garrett, Esq. treated him "unethically" during his criminal trial by providing Plaintiff with a shirt and jacket that were too small. Plaintiff also alleges that Defendant Garrett in some way conspired with Judge Maier, although the exact nature of this conspiracy is not apparent.

Plaintiff's claims against Judge Geroff and Defendant Armstrong stem from a parole hearing that took place on January 20, 1997. Plaintiff alleges that Defendant Armstrong, his attorney, represented him improperly during that hearing by arguing "technical parole violations" against his wishes. Plaintiff also alleges that Judge Geroff and Defendant Armstrong conspired to treat him "unethically" by changing the date of his sentencing in order to convict him of these "technical parole

violations."

III. STANDARD.

Under Rule 12(b)(6), the Court must determine whether the allegations contained in the complaint, construed in the light most favorable to Plaintiff, show a set of circumstances which, if true, would entitle Plaintiff to the relief he requests. Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami, 82 F.3d at 65). A complaint will be dismissed only if Plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

V. DISCUSSION.

Section 1983 requires Plaintiff to show (1) that a person acting under color of state law (2) deprived him of a right, privilege or immunity secured by the Constitution or federal law. 42 U.S.C. § 1983; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327 (1986); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). Even if it is assumed that Plaintiff has been deprived of a right, privilege, or immunity, the complaint must nevertheless be dismissed because Judges Maier and Geroff are entitled to absolute immunity and Defendants Garrett and Armstrong are not state actors.

A. Plaintiff's claims against Judges Maier and Geroff.

When the defense of immunity is asserted in response to an alleged violation of section 1983, it is appropriate for the

court to first decide that threshold matter before dealing with the established section 1983 analysis. D.R. by L.R. v. Middle Bucks Area Vo. Tech School, 972 F.2d 1364, 1367-68 (3d Cir. 1992), cert. denied 506 U.S. 1079 (1993).

It is well settled that judges are entitled to absolute immunity while acting in their judicial roles. Cook v. DiNubile, 838 F. Supp. 231, 231 (E.D. Pa. 1993)(citing Stump v. Sparkman, 435 U.S. 349, 355-56 (1978)). Plaintiff contends that because both Judges Maier and Geroff stepped "off the bench" during the court proceedings they acted outside their judicial roles. Judicial immunity is overcome only when a judge acts outside his judicial capacity or when a judge acts in the complete absence of all jurisdiction. Montague v. Maier, No. 95-3238, 1995 WL 418589 at *1(E.D. Pa. July 14, 1995)(citing Mireles v. Waco, 502 U.S. 9, 11 (1991)(per curiam)). Plaintiff's allegation is insufficient to overcome the doctrine of absolute judicial immunity, and therefore, the claims seeking monetary damages against Judges Maier and Geroff must be dismissed.

Plaintiff also seeks an injunction against Judges Maier and Geroff. Section 309© of the Federal Courts Improvement Act of 1996 amended section 1983 to bar injunctive relief "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Because declaratory relief is available to Plaintiff, this Court can not grant his request for

an injunction. Plaintiff's claims against Judges Maier and Geroff seeking injunctive relief are therefore dismissed.

B. Plaintiff's claims against Defendants Garrett and Armstrong.

As stated above, Defendant Garrett is a private attorney who represented Plaintiff during his criminal trial and Defendant Armstrong is a public defender who represented Plaintiff during a probation hearing. To maintain an action under section 1983, Plaintiff must show that each Defendant acted under color of state law while depriving the Plaintiff of his rights. It is well settled that neither public defenders nor private attorneys are state actors for purposes of section 1983. Polk County v. Dodson, 454 U.S. 312, 319 (1981); Thomas v. Howard, 455 F.2d 228, 229 (3d Cir. 1972) (per curiam); Williams v. Dark, 844 F. Supp. 210, 213 (E.D. Pa. 1993), aff'd. 19 F.3d 645 (1994).

Plaintiff correctly argues that a conspiracy between a state actor and a non-state actor will extend section 1983 liability to a non-state actor. Dennis v. Sparks, 449 U.S. 24, 27 (1980) ; Figueroa v. Clark, 810 F.Supp. 613, 614 (E.D. Pa. 1992). Plaintiff contends that one conspiracy existed between Judge Maier and Defendant Garrett and that a second conspiracy existed between Judge Geroff and Defendant Armstrong. Through these conspiracies, Plaintiff seeks to subject Defendants Garrett and Armstrong to liability under Section 1983.

Even the most generous reading of Plaintiff's pro se

complaint can not overcome the lack of factual support for these alleged conspiracies. Figueroa, 810 F.Supp. at 616 (E.D. Pa. 1992). Allegations of a conspiracy "must be supported by facts bearing out the existence of the conspiracy and indicating its broad objectives and the role each defendant allegedly played in carrying out those objectives." Cap v. Hartman, No. 95-5871, 1996 WL 266701, at *3, (E.D. Pa. May 9, 1996) (citing Flanagan v. Shively, 783 F. Supp. 922, 928 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993)).

Plaintiff's complaint fails to provide any facts which tend to support his conspiracy theory. Plaintiff points out that during the jury deliberations Defendant Garrett handed Judge Maier a copy of the docket entry sheet. Even if true, this evidence is insufficient to prove the existence of a conspiracy. Likewise, the fact that the date set for Plaintiff's sentencing was changed, does not, standing alone, tend to prove that Judge Geroff and Defendant Armstrong altered their schedules in order to convict Plaintiff. Because Plaintiff has inadequately plead the existence of any conspiracy, his claims against Defendants Garrett and Armstrong must be dismissed.

For these reasons I hereby enter the following Order:

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEITH M. BENNETT,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 97-3555
	:	
JUDGE EUGENE E. MAIER, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of November, 1997, upon consideration of the Motions of Defendants Maier, Geroff, Garrett, and Armstrong to dismiss the Complaint, and all responses thereto, it is hereby ORDERED that Defendants' Motions are GRANTED and this action is DISMISSED as to those Defendants.

Defendant Armstrong's Rule 12(e) motion is DENIED as moot.

The Clerk's office is directed **not** to mark this case as closed since there are other defendants remaining.

BY THE COURT:

ROBERT F. KELLY, J.

