

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

JAMES MICHAEL DUNYAN

v.

MARIE PAOLOCA, et al.

CIVIL ACTION

NO. 91-2095

MEMORANDUM

Broderick, J.

July 6, 1998

James Michael Dunyan, a prisoner at the State Correctional Institution in Somerset, Pennsylvania, commenced this pro se action in 1991 pursuant to 42 U.S.C. § 1983, alleging that several employees of the Philadelphia Police Department and private individuals violated his civil rights in connection with his state criminal prosecution and conviction. On July 10, 1992, upon request of the defendants, the Court placed this action in civil suspense until the plaintiff's pending state criminal prosecution became final because of the possibility that the issues determined by the state court might have collateral estoppel effect in this action.

On June 26, 1997, the Court sent notice to the parties inquiring about the status of the underlying criminal case and whether this action should remain in civil suspense. When neither the plaintiff nor the defendants responded, the Court removed the case from civil suspense and dismissed it for lack of

prosecution by Order dated April 24, 1998. The plaintiff has filed a motion for reconsideration of that order, claiming that he never received the June 26, 1997 notice because it was sent to his former correctional institution even though he had advised the Clerk of his new address. The plaintiff has also requested that this action be placed back into civil suspense until his pending state habeas petition becomes final. For the reasons set forth below, the Court will grant the plaintiff's motion for reconsideration. However, rather than placing the case back into civil suspense, the Court will dismiss the complaint without prejudice to refiling if and when the plaintiff's state criminal conviction is invalidated.

I. BACKGROUND

This civil rights action stems from the November 4, 1989 arrest and subsequent trial of the plaintiff for the kidnaping and rape of a thirteen year old boy. The plaintiff was tried in the Court of Common Pleas of Philadelphia County and convicted of involuntary deviate sexual intercourse. He was sentenced on January 21, 1992 and is currently incarcerated at S.C.I. Laurel Highlands in Somerset, Pennsylvania.

The plaintiff's amended complaint, filed November 18, 1991, raises civil rights claims against the following defendants: (1) Philadelphia police detective Marie Paoloca, Badge # 8018; (2) Ms. Paoloca's supervisor, who is unnamed; (3) police officer Greg Pinto, Badge # 1339; (4) police officer Christopher Lee, Badge #

1651; (5) police officer William Sgarez, Badge # 4576; and (6) James Redner, Sr., a private citizen. Three other defendants who were listed in the plaintiff's original complaint were either not included in his amended complaint or were dismissed by the Court on April 20, 1992.

The plaintiff alleges claims for unlawful search, unlawful arrest, false imprisonment, various Miranda violations, malicious prosecution, and denial of a fair trial. Specifically, he asserts claims against police officers Pinto and Sgarez for illegally searching his home without a warrant and without satisfying the "knock and announce" requirement, and for unlawful arrest. He asserts that Detective Paoloca interrogated him despite being told that he wished to remain silent and see an attorney, attempted to coerce his confession, maliciously prosecuted him, and tampered with potential alibi witnesses prior to trial. He claims that police officer Lee acted in concert with Detective Paoloca to deprive him of a fair trial. Finally, he contends that Mr. Redner, at the direction of Detective Paoloca, threatened a potential alibi witness from testifying in his defense.

On July 10, 1992, the Court placed this action in civil suspense upon motion of the defendants because the plaintiff's state criminal conviction was still pending on direct appeal. Under applicable law at that time, the Court stayed the action on the grounds that many, if not all, of the issues raised in this action might be precluded by the issues determined in the state

criminal action. Then, on June 26, 1997, after almost five years of inactivity, the Court sent notice to the plaintiff and all counsel of record requesting a status update so that the Court could return the case to its active docket, if necessary. On April 24, 1998, after neither the plaintiff nor the defendants responded to the notice, the Court ordered the case restored to the active docket and dismissed for lack of prosecution.

II. DISCUSSION

Having reconsidered the Order of April 24, 1998, the Court has determined that this case should not be dismissed for lack of prosecution. The plaintiff has stated in his memorandum in support of his motion for reconsideration that he never received notice from the Court requesting a status update. The plaintiff also states that he notified the Clerk of his change of address as well as the status of his underlying state criminal case. These claims appear to be supported by the record, as the Clerk's Office only recently updated his address despite receiving earlier correspondence from the plaintiff. Accordingly, the Court will grant the plaintiff's motion for reconsideration and will not dismiss the complaint for lack of prosecution. However, having taken the opportunity to review the plaintiff's claims in accordance with currently applicable law, the Court has determined that the complaint must be dismissed without prejudice to refiling if and when his criminal conviction is invalidated.

Prior to 1994, the law in this Circuit required that a §

1983 action seeking damages for unlawful arrest or conviction should be stayed pending a final decision on the plaintiff's state criminal conviction if there were common dispositive issues in the state and federal actions. This was so because in Allen v. McCurry, 449 U.S. 90, 101 S. Ct. 411 (1980), the Supreme Court held that the doctrine of collateral estoppel bars a § 1983 plaintiff from relitigating issues decided against him in his state criminal proceedings. In applying this precedent, the Third Circuit ruled that the doctrine of collateral estoppel could not be applied to a Pennsylvania criminal conviction while it was still being appealed, because the conviction was not final. Bailey v. Ness, 733 F.2d 279 (3d Cir. 1984). Thus, the Third Circuit instructed district courts to "stay the federal court proceedings until the state court [appeals] have run their course or have run out of time in which to be brought." Id. at 280. This is what the Court did in this action by Order dated July 10, 1992. Then, in 1993, the Third Circuit extended its Bailey ruling by holding that § 1983 actions should be stayed not only until all direct appeals have been exhausted, but also until all state postconviction relief has been exhausted. Linnen v. Armainis, 991 F.2d 1102, 1109 (3d Cir. 1993). Since the plaintiff here is still pursuing state postconviction relief, Linnen would counsel that this action should be placed back into civil suspense.

However, the Supreme Court's 1994 decision in Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), dramatically

changed the understanding of § 1983 actions. In Heck, the Supreme Court ruled that an action to recover damages for an unconstitutional conviction or imprisonment, or for other harms which would render a conviction invalid, is simply not cognizable under 42 U.S.C. § 1983 unless and until the conviction has been invalidated. The Supreme Court wrote:

We hold that, in order to recover damages for [an] 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, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Heck, 512 U.S. at 486-87; 114 S. Ct. at 2372. Thus, the Supreme Court held that when a state prisoner seeks damages in a § 1983 suit in which entering judgment in his favor would necessarily imply the invalidity of his conviction or sentence, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated."

Id.

In the instant case, the plaintiff is clearly seeking to recover damages for his allegedly unconstitutional conviction and sentence. He has asserted claims for unlawful search, unlawful arrest, false imprisonment, various Miranda violations, malicious prosecution, and denial of a fair trial. Each one of these claims is closely connected with his arrest, trial, and

conviction, and there is nothing in the record to suggest that he is claiming any actual, compensable injury apart from his conviction and imprisonment (such as might be the case in a claim for excessive force). See Heck, 512 U.S. 487 n. 7; 114 S. Ct. 2372 n. 7; Nelson v. Jashurek, 109 F.3d 142, 145 (3d Cir. 1997); Shelton v. Macey, 883 F. Supp. 1047, 1050 (E.D. Pa. 1995) (Waldman, J.). Accordingly, the plaintiff's claims are not cognizable under § 1983 until he can demonstrate that his conviction has been invalidated, and they must be dismissed without prejudice to refiling if and when his conviction is invalidated.

III. CONCLUSION

For the forgoing reasons, the Court will grant the plaintiff's motion to reconsider the Court's Order of April 24, 1998 dismissing his complaint for lack of prosecution. However, upon reconsideration of the plaintiff's claims and currently applicable law, the Court has determined that the complaint must be dismissed without prejudice to refiling if and when the plaintiff's state criminal conviction is invalidated.

An appropriate Order follows.

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ORDER

AND NOW, this 6th day of July, 1998; upon consideration of the plaintiff's motion for reconsideration of this Court's Order of April 24, 1998 dismissing this action for lack of prosecution and his memorandum in support thereof; and for the reasons set forth in the Court's Memorandum of this date;

IT IS ORDERED: The plaintiff's motion for reconsideration of the Court's Order of April 24, 1998 dismissing this action for lack of prosecution is GRANTED.

IT IS FURTHER ORDERED: The plaintiff's complaint is DISMISSED WITHOUT PREJUDICE to refiling if and when the plaintiff's state court conviction is legally invalidated.

RAYMOND J. BRODERICK, J.