

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

VINCENT GRAHAM : CIVIL ACTION
 :
 v. :
 :
 W. KOOKER, et al. : NO. 98-0038

MEMORANDUM AND ORDER

HUTTON, J.

September 23, 1998

Presently before the Court are Motions to Dismiss by Defendant Cynthia Anderson (Docket No. 16) and Defendants Thomas Rowlands and Jennifer Hendricks (Docket No. 17). Also before the Court are Plaintiff's responses thereto (Docket Nos. 23 & 27). For the reasons stated below, the motions are **GRANTED**.

I. BACKGROUND

Plaintiff, Vincent Graham ("Plaintiff" or "Graham"), is a prisoner at the State Correctional Institution at Rockview. In his pro se complaint, he complains of the actions of four Defendants. First, Plaintiff states that on February, 15, 1990, Defendant Cynthia Anderson, a clerk employed by the City of Philadelphia's Clerk of Quarter Sessions, incorrectly recorded that a sentence imposed by Philadelphia Court of Common Pleas Judge Caroyln Temin was to run consecutively, instead of concurrently, with a sentence imposed in another criminal case. Plaintiff further states that he was improperly incarcerated for a total of

six months because of this error. Second, Plaintiff alleges that on August, 2, 1990, William Kooker, who was a Records Officer at Graterford until April 1993 when he retired, failed to give Plaintiff credit for three months of incarceration. Third, Plaintiff states that on November 18, 1997, Defendant Jennifer Hendricks, Department of Corrections Records Coordinator, did not properly credit him for five months of incarceration. Fourth and finally, Plaintiff alleges that on December 16, 1997, when he complained of Defendant Hendricks' error to Defendant Thomas Rowlands, State Correctional Institution at Graterford Records Supervisor, Defendant Rowlands refused to give him credit for an additional four months.

Thereafter, Plaintiff brought three lawsuits. In Graham v. Meyers et al., Civil Action No. 98-0720, Plaintiff brought a petition for habeas corpus. Magistrate Judge Arnold C. Rapoport wrote a report and recommendation that the petition be dismissed for failure to exhaust state remedies. Judge Louis Bechtle approved of the Magistrate Judge's report and recommendation and the case was closed. In Graham v. Department of Corrections, No. 9MD1998, Plaintiff brought a mandamus action in the Commonwealth Court of Pennsylvania. This case is still pending. Finally, in this case, Plaintiff filed a pro se complaint alleging that the Defendants violated rights secured by the First, Eighth and Fourteenth Amendments of the United States Constitution.

Plaintiff's complaint also alleges a retaliation claim. Apparently, under 42 U.S.C. § 1983, Plaintiff seeks a declaratory judgment, compensatory damages and punitive damages.¹ Defendants move to dismiss the complaint.²

II. MOTION TO DISMISS STANDARD

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure

¹ This Court assumes that the Plaintiff brings suit under 42 U.S.C. § 1983 because: (1) Plaintiff already brought a habeas corpus petition which was dismissed; (2) Plaintiff seeks monetary damages; (3) Plaintiff's complaint is unclear; and (4) Plaintiff completed a form with his complaint indicating he was filing under 42 U.S.C. § 1983. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (noting that pro se plaintiff's complaints should be construed liberally). Because the Plaintiff drafted the complaint pro se, this Court will not hold lay persons to the same standards as attorneys. See id.

² The Defendants move to dismiss on several grounds. Because this Court finds merit in the statute of limitations argument by Defendant Anderson and the failure to state a claim under Supreme Court precedent by Defendants Rowlands and Hendricks, the Court will not consider the Defendants' alternative grounds.

12(b)(6),³ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)). The Court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

III. DISCUSSION

A. Defendants Cynthia Anderson and William Kooker

Defendants Anderson and Kooker assert that the Plaintiff's claims are time barred because any § 1983 violation occurred in 1990. A plaintiff may bring a § 1983 action under the Civil Rights Act of 1964 if he or she alleges that a person acting under color of state law deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. See 42 U.S.C. § 1983 (1994); West v. Atkins, 487 U.S. 42, 48-49 (1988); Groman v. Township of Manalpan, 47 F.3d 628, 633 (3d

³ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

Cir. 1995). A plaintiff, however, may not seek relief if the statute of limitations for the civil rights action has run. See Wilson v. Garcia, 471 U.S. 260, 276 (1985); Knoll v. Springfield Township Sch. Dist., 763 F.2d 584, 585 (3d Cir. 1985). The United States Supreme Court held that civil rights claims brought pursuant to 42 U.S.C. § 1983 are best characterized as personal injury actions for statute of limitations purposes. See Wilson, 471 U.S. at 276. Therefore, a court analyzing a civil rights claim must first determine whether the forum state's statute of limitations for personal injury actions has run. See id. In Pennsylvania, the statute of limitations for personal injuries is two years, and thus, the statute of limitations for a civil rights cause of action under 42 U.S.C. § 1983 is also two years. See 42 Pa. Cons. Stat. Ann. § 5524 (1981 & Supp. 1996); Knoll, 763 F.2d at 585 (citations omitted).

In the instant case, Plaintiff details how the actions of Defendant Anderson, on February 2, 1990, and Defendant Kooker, on August 2, 1990, lead to the violations of the First, Eighth and Fourteenth Amendments. See Pl.'s Compl. at p. V, ¶ 1. "A section 1983 cause of action accrues when the plaintiff knew or should have known of the injury upon which [his or her] action is based." Sameric Corp. of Del., Inc. v. Philadelphia, No. CIV.A.97-1615, 1998 WL 164874, at *17 (3d Cir. Apr. 10, 1998). This Court finds from the Plaintiff's pleadings that Plaintiff knew of Anderson and

Kooker's activities which could have led to injury on August 2, 1990. Therefore, because the Plaintiff filed suit on February 2, 1998, more than seven (7) years after his cause of action arose, the Plaintiff's claims are dismissed with prejudice as they relate to Defendants Anderson and Kooker.⁴

B. Defendants Thomas Rowlands and Jennifer Hendricks

1. Analysis of Plaintiff's Section 1983 Claims

In terms of relief, Plaintiff seeks a "declaratory judgment that the defendants' acts herein violated plaintiff's rights under the United States Constitution." See Pl.'s Compl. at p. V, ¶ 1. Defendants argue that the Supreme Court's decision in Preiser v. Rodriguez requires this Court to dismiss Plaintiff's 42 U.S.C. § 1983 complaint in so far as it requests a determination that his current state sentence is unconstitutional. This Court agrees.

In Preiser v. Rodriguez, 411 U.S. 475, 489 (1973), the Supreme Court held that "when a state prisoner, though asserting jurisdiction under the Civil Rights Act, is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or speedier release from such imprisonment, his sole federal remedy

⁴ Apparently, Defendant Kooker was never served with a complaint. Because this Court finds that the Complaint is dismissed as it relates to Defendant Kooker due to the statute of limitations, it will not address Defendant Kooker's lack of service argument.

is a writ of habeas corpus, to which the exhaustion requirement is applicable." Id. Because Plaintiff seeks monetary relief in this action and has already filed a habeas corpus petition that has been dismissed, this Court will interpret Plaintiff's complaint as a § 1983 claim and not as a habeas corpus petition. Moreover, to the extent that the Plaintiff in this case argues that he is entitled to actual release from prison because of Defendants errors in calculating his sentence, this Court finds that he may not seek such relief because a federal habeas corpus petition is Plaintiff's only available avenue for immediate release under Preiser. See id. (noting that habeas corpus petition is only available, and not a § 1983 claim, for immediate release due to unconstitutional confinement because a contrary holding would allow prisoner's to avoid the requirement of exhausting state remedies before pursuing a habeas corpus petition).

Plaintiff also seeks monetary relief, for violation of rights secured by the United States Constitution and based on a retaliation claim, in the amount of compensatory damages of \$10,000 from each Defendant, punitive damages of \$10,000 from each Defendant, and the costs of bringing this action. See Pl.'s Compl. Form for Prisoner Filing 42 U.S.C. § 1983 Civil Rights Compl. in E.D. of Pa. at 4. This Court finds that it must dismiss the complaint, in so far as it seeks monetary damages, under the Supreme Court's decision in Heck v. Humphrey.

In Heck v. Humphrey, 512 U.S. 477, 487 (1994), the Supreme Court held that where a judgment in favor of the plaintiff would necessarily implicate the validity of the plaintiff's conviction or the length of his sentence, a cause of action under 42 U.S.C. § 1983 is not cognizable unless the plaintiff can show that his underlying "conviction or sentence had been reversed on direct appeal, declared invalid by a state tribunal authorized to make such a determination or called into question by the issuance of a federal writ of habeas corpus." See id. Thus, the Supreme Court's direction to a district court is clear:

when 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.

Id. Several courts have applied the holding in Heck to bar a § 1983 claim for damages based on an improper calculation of a prisoner's sentence. See Clemente v. Allen, 120 F.3d 703, 705 (7th Cir. 1997) (holding that complaint was properly dismissed by district court because Heck barred plaintiff's claim for damages under § 1983 for improper calculation of his sentence); Crawford v. Barry, No. CIV.A.95-7073, 1996 WL 734096, at *2 (D.C. Cir. Nov. 8, 1996) (holding that plaintiff was not entitled to relief for "inaccurate sentence calculation" under reasoning in Heck); Glenn v. Armstrong, No. CIV.A.93-0807, 1998 WL 241199, at *3 (Mar. 31,

1998) (holding that plaintiff's claim for damages, due to the improper aggregation of three sentences, under § 1983 was barred because plaintiff failed to show that he successfully challenged the manner of the implementation of his sentence in state court or federal habeas corpus action as required by Heck).

While one might distinguish Heck because an error in the calculation of a sentence does not challenge either the conviction or the sentence imposed, this Court finds that Heck does require the dismissal of this claim. In Glenn, a plaintiff sought damages under § 1983 contending that his sentence had been miscalculated by the defendants. See id. at *1. Prior to his § 1983 suit, Glenn had filed a petition for habeas corpus which was denied. See id. The defendants in Glenn argued that Heck barred the claim because a judgment in favor of Glenn would implicate the invalidity of his sentence and Glenn had not shown that his sentence had been invalidated in state court or federal habeas corpus petition. See id. Indeed, Glenn's petition for habeas corpus on these same grounds was denied. See id. Glenn attempted to distinguish Heck from his case by arguing that a calculation of a sentence does not challenge either the conviction or the sentence imposed. See id. at *3. The court in Glenn disagreed and stated that for the plaintiff to prevail, "the court would have to conclude that the defendant has been improperly implementing [plaintiff's] sentences" and "the validity of the duration of his confinement would

necessarily be implicated." Id. Thus, the court found that Glenn's claim was not cognizable because he did not show the manner of implementation of his sentence was not successfully challenged in state court or a federal habeas corpus action. See id.

As was the case in Glenn, Magistrate Judge Rapoport dismissed Plaintiff's habeas corpus petition in this case. Magistrate Judge Rapoport issued a report and recommendation on May 7, 1998 that Plaintiff's habeas corpus petition be dismissed for failure to exhaust state court remedies. On May 18, 1998, Judge Bechtle approved and adopted Magistrate Judge Rapoport's report and recommendation. Plaintiff's case was subsequently closed. Moreover, Plaintiff has not alleged, nor can he allege, that he has successfully challenged the implementation of his sentence in state court or federal habeas corpus petition. Therefore, under the Supreme Court's decision in Heck, this Court dismisses Plaintiff's Complaint with leave to renew should he successfully challenge the implementation of his sentence in state court or a federal habeas corpus petition. See Nelson v. Delaware County, No. CIV.A.97-6548, 1997 WL 793060, at *3 (E.D. Pa. Dec. 9, 1997) ("Thus, because plaintiff has not demonstrated that his conviction or sentence has been invalidated, his claim for money damages against [the defendant] must be dismissed without prejudice."); Shelton v. Macey, 883 F. Supp. 1047, 1049 (E.D. Pa. 1995) ("Heck mandates a

dismissal of plaintiff's claim without prejudice to renew if and when his state court conviction is legally invalidated.").

2. Plaintiff's Complaint Does Not Allege Any State Law Claims

Finally, Defendants assert that Plaintiff's state law claims, if any, should be dismissed because of sovereign immunity.⁵ While the Court recognizes that it should interpret Plaintiff's pro se complaint liberally, the Court finds no allegations that any of the Defendants' actions violated state laws. Therefore, the Court will not address this issue.

An appropriate Order follows.

⁵ Defendants Rowlands and Hendricks do not read Plaintiff's complaint to raise any state law claims. Nonetheless, the Defendants raised this argument had the Court so found.

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O R D E R

AND NOW, this 23rd day of September, 1998, upon consideration of Defendants' Motions to Dismiss, IT IS HEREBY ORDERED that the Motions are **GRANTED**.

IT IS FURTHER ORDERED that:

(1) Plaintiff's Complaint is dismissed with prejudice as it pertains to Defendants Anderson and Kooker; and

(2) Plaintiff's Complaint is dismissed without prejudice, as it relates to Defendants Rowlands and Hendricks, with leave to renew should the Plaintiff successfully challenge the implementation of his sentence in state court or a federal habeas corpus petition.

BY THE COURT:

HERBERT J. HUTTON, J.