

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

RAOUL BARRIE CLYMER : CIVIL ACTION
 :
v. :
 :
ATTORNEY GENERAL'S OFFICE, ATTORNEY :
GENERAL ERNIE PREATE, DEPUTY ANDREW :
DEMAREST, AGENT FRANK DIMICELLI, :
AGENT SHERI DATIS, and :
 :
COUNTY OF BUCKS, BOARD OF :
COMMISSIONERS, MICHAEL G. :
FRITZPATRICK, CHARLES H. MARTIN, :
SANDRA A. MILLER, and :
 :
COMMON PLEAS JUDGES EDWARD G. :
BIESTER, ISSAC GARB, and :
 :
DISTRICT ATTORNEY OFFICERS ALAN :
RUBENSTEIN, WILLIAM E. MOORE, MICHAEL :
K. PARLOW, STEPHEN B. HARRIS, and :
JOHN J. KERRIGAN, JR., Esq., :
individually, personally and in their :
official capacities : NO. 98-6111

MEMORANDUM AND ORDER

HUTTON, J.

January 29, 1999

Presently before this Court is the Motion to Dismiss the pro se Complaint filed on behalf of Defendants, The Honorable Isaac Garb and The Honorable Edward G. Biester ("Judicial Defendants") (Docket No. 11) and Plaintiff's response thereto (Docket No. 28). For the foregoing reasons, the Judicial Defendants' Motion to Dismiss pro se Complaint is **GRANTED**.

I. BACKGROUND

On April 20, 1998, Raoul Barrie Clymer ("Plaintiff" or "Clymer"), an inmate at the State Regional Correctional Facility at Mercer, Pennsylvania, commenced this in forma pauperis Bivens Action by filing his pro se Complaint in the United States District Court for the Western District of Pennsylvania. On November 20, 1998, this action was transferred to this Court. The Complaint alleges violations pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985(3). The alleged constitutional violations, which serve as the basis of this action, occurred in Bucks County and arise from a drug arrest in November of 1994 involving the interstate transportation of marijuana and conviction in April of 1995. Named as defendants are the following state officials: the former Pennsylvania Attorney General, Ernest Preate; the Deputy Attorney General, Andrew Demarest; two employees of the state attorney general's office, Frank Demicelli and Sheri Datis; Bucks County; the Chairman of the Bucks County Board of Commissioners, Michael G. Fritzpatrick; the Commissioner of Bucks County, Sandra A. Miller; the Vice-Commissioner of Bucks County, Charles H. Martin; the Honorable Edward G. Biester and the Honorable Issac Garb of the Court of Common Pleas of Bucks County; District Attorney for Bucks County, Alan Rubenstein; the Assistant District Attorneys for Bucks County, William E. Moore and Stephen B. Harris; the Deputy District Attorney for Bucks County, Michael K. Parlow;

and attorney John J. Kerrigan, Jr.\¹ The Plaintiff complains in this action that the Defendants violated his rights as secured by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. He seeks a declaratory judgment, a preliminary and permanent injunction, compensatory and punitive damages, a jury trial, the costs of prosecuting this action, and any other relief deemed appropriate by this Court.

On April 21, 1995, Clymer was convicted for possession with intent to distribute one-hundred pounds of marijuana, for which he is currently serving a five to ten year sentence. On March 7, 1996, the Superior Court of Pennsylvania affirmed Clymer's conviction. Clymer then appealed his conviction to the Pennsylvania Supreme Court, which denied his appeal on December 9, 1996.

On July 13, 1998, the Judicial Defendants filed a Motion to Dismiss the pro se Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure as it pertains to them. The Plaintiff filed his response thereto on August 13, 1998.

II. DISCUSSION

A. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the

¹The other defendants have Motions pending requesting this Court to dismiss Plaintiff's Complaint as it pertains to them.

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) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 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. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." 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)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). 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

³. Rule 12(b)(6) provides that:

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).

consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

B. Judicial Defendants' Motion to Dismiss

1. Plaintiff's Claims

Viewed in the light most favorable to the Plaintiff, the facts are as follows. Judicial Defendants are state court judges who presided over criminal proceedings related to the Plaintiff. The allegations as to Judge Garb are that he discharged Plaintiff's pretrial habeas corpus petition contesting the jurisdiction of the Bucks County Courts, without a hearing. (Compl. ¶¶ 48, 76, 77.) As to Judge Biester, Plaintiff alleges that Judge Biester heard the pretrial motions in Plaintiff's case, stated that "the trial court has presumptive jurisdiction," and refused to further consider the pretrial motion on jurisdiction. (Compl. ¶¶ 51-53.) Plaintiff also claims that Judge Biester conspired with Plaintiff's lawyer (Defendant Kerrigan) at Plaintiff's criminal trial, as to certain evidentiary matters at the trial. (Compl. ¶ 84.)

Following his trial and conviction, Plaintiff filed a post-trial motion based on "newly discovered evidence that the prosecutor had suborned perjury" by the police officer and informant, but Judge Biester denied the motion "without addressing the issue of perjury" (Compl. ¶¶ 65, 66.)

Plaintiff claims these actions violated his habeas corpus, First Amendment, Fifth Amendment, Sixth Amendment and

Fourteenth Amendment rights. Moreover, Plaintiff claims that Judge Biester violated the mandate of the Pennsylvania Rules of Criminal Procedure, Rule 310, providing that all pretrial motions shall be determined before trial.

Plaintiff requests a declaratory judgment that Judicial Defendants have violated Plaintiff's constitutional rights; that a preliminary and permanent injunction be issued requiring Judicial Defendants to make pretrial determinations of jurisdictional challenges; compensatory damages in excess of 1.5 million dollars from each defendant, and punitive damages of 50 million dollars from defendants collectively.

2. Merits

In the present motion, the Judicial Defendants have raised five general issues. First, they assert that Plaintiff's action for damages against Judicial Defendants is barred by the doctrine of judicial immunity. Second, they argue that section 309(c) of the Federal Courts Improvement Act of 1996 bars any claim for injunctive relief or for costs against Judicial Defendants. Third, Judicial Defendants allege that Plaintiff fails to state a habeas corpus claim against them. Fourth, they assert that this Court lacks subject-matter jurisdiction under the Rooker-Feldman Doctrine to Review a Decision of the Courts of Pennsylvania. Finally, Judicial Defendants contend that venue in the Western

District of Pennsylvania is not proper.³ For the foregoing reasons, the Court finds that Plaintiff's claims against Judicial Defendants are barred by the doctrine of judicial immunity. Therefore, Judicial Defendants' motion to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) will be granted. Because the Court finds that Plaintiff's claims against Judge Garb and Judge Biester are barred by the doctrine of judicial immunity, the Court finds it unnecessary to address Judicial Defendants' other arguments.

3. Judicial Immunity

The United States Supreme Court has made clear, as early as 1872, that judges "are not liable in civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." Bradley v. Fisher, 13 Wall. 335, 347 (1872). Based on this rule, the Supreme Court has "consistently adhered to the rule that 'judges defending against § 1983 actions enjoy absolute immunity from damages liability for acts performed in their judicial capacities.' " Dennis v. Sparks, 449 U.S. 24, 27 (1980) (quoting Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 734-35 (1980)) (internal citations omitted). This judicial immunity is "immunity from suit, not just from an ultimate

³Subsequent to Judicial Defendants filing their Motion to Dismiss, the instant action was transferred to the United States District Court of the Eastern District of Pennsylvania.

assessment of damages." Mireles v. Waco, 502 U.S. 9, 11 (1991). Judicial immunity can therefore not be overcome by allegations of bad faith or malice. Pierson v. Ray, 386 U.S. 547, 554 (1967). The immunity can be overcome only in two circumstances. Mireles, 502 U.S. at 11. A judge is not "not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity." Mireles, 502 U.S. at 11. A judge is also not immune for actions, although judicial in nature, taken in the "complete absence of all jurisdiction." Id. at 12.

The doctrine of judicial immunity applies equally to courts of limited jurisdiction, such as district justices, as to courts of general jurisdiction. See Schmidt v. Degen, 376 F. Supp. 664 (E.D. Pa. 1974). See also Schuler v. City of Chambersburg, 641 F. Supp. 657 (M.D. Pa. 1986); Horne v. Farrell, 560 F. Supp. 219 (M.D. Pa. 1983). Judge Garb and Judge Biester therefore enjoy absolute immunity unless their actions were taken outside of their judicial capacity or were taken in the "complete absence of all jurisdiction." Mireles, 502 U.S. at 12. Neither of these exceptions are present here.

Both Judge Garb and Judge Biester were clearly acting in their judicial capacities when they took the actions alleged by Plaintiff to be violative of his constitutional rights. Plaintiff's allegations against Judge Garb relate solely to his discharge of Plaintiff's pretrial habeas corpus petition contesting

the jurisdiction of the Bucks County Courts. All of Plaintiff's allegations against Judge Biester arise out of Plaintiff's trial for possession of marijuana, and Judge Biester's consideration of pre-trial and post-trial motions. Under Pennsylvania state law, judges of the courts of Common Pleas have broad judicial powers including unlimited original jurisdiction of all actions and proceedings. Pa. Const. Art. V, § 5(b); 42 Pa. Const. Stat. Ann. § 931 (Purdon 1981). Discharging petitions, making decisions and issuing orders in criminal cases is a function normally performed by a judge of the Court of Common Pleas.

Moreover, Judicial Defendants actions were clearly not taken in the "complete absence of all jurisdiction." Mireles, 502 U.S. at 12. Because a judge has jurisdiction to decide whether he has jurisdiction, Plaintiff's assertion that the Bucks County Court had no jurisdiction over his criminal case does not defeat the bar of absolute judicial immunity. The question is whether at the time the judge took the challenged action he had jurisdiction over the subject matter before him, and, in answering that question, "the scope of the judge's jurisdiction must be construed broadly." Stump v. Sparkman, 435 U.S. 349, 356 (1978). The Pennsylvania Constitution, Pa. Const. Art. V, § 5(b), and statute, 42 Pa. Const. Stat. Ann. § 931 (Purdon 1981), gives the Common Pleas Court subject matter jurisdiction over criminal trials. Judge Biester's alleged statement that the Bucks County Court had "presumptive

jurisdiction," (Compl. ¶ 53), is in itself a judicial determination protected by judicial immunity. Therefore, we cannot conclude that both Judge Garb and Judge Biester acted in the "clear absence of all jurisdiction over the subject matter." In determining whether the act was judicial, we look to the nature of the function performed. Forrester v. White, 484 U.S. 219, 227-29 (1988). Judicial Defendants' actions were judicial in that, they performed a function "normally performed by a judge." Stump, 435 U.S. at 362. Therefore, both Judge Garb and Judge Biester are entitled to judicial immunity.

An appropriate Order follows.

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O R D E R

AND NOW, this 29th day of January, 1999, upon consideration of the Motion to Dismiss the pro se Complaint filed on behalf of Defendants, The Honorable Isaac Garb and The Honorable Edward G. Biester ("Judicial Defendants") (Docket No. 11) and Plaintiff's response thereto (Docket No. 28), IT IS HEREBY ORDERED that the Judicial Defendants' Motion to Dismiss pro se Complaint is **GRANTED**.

It IS FURTHER ORDERED THAT Plaintiff's Complaint against The Honorable Isaac Garb and The Honorable Edward G. Biester **IS DISMISSED** for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

BY THE COURT:

HERBERT J. HUTTON, J.