

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

WILLIAM MICHAEL STRUBE and	:	
STAR NADA STRUBE,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 99-2390
	:	
JORDAN LOUIS MORALES,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

October 12, 1999

Presently before the Court in this 42 U.S.C §1983 action are Defendant Jordan Louis Morales’s (“Defendant”) Motion to Dismiss Plaintiff William Michael Strube (“William Strube”) and Star Nada Strube’s (“Star Strube”) (collectively “Plaintiffs”) Complaint. For the reasons set forth below, the Court will grant Defendant’s Motion.

I. BACKGROUND

William Strube is currently incarcerated at F.C.I. Schuylkill, Minersville, Pennsylvania. On March 21, 1994, Defendant was arrested in the Western District of Pennsylvania, prosecuted, and sentenced pursuant to Defendant’s admission of guilt via guilty plea. Immediately prior to Defendant’s surrendering to his prison sentence, the Lancaster County Drug Task Force (“Task Force”) raided his home in conjunction with other law enforcement agencies. Plaintiffs contend that the Task Force agents seized , inter alia, an undisclosed amount of guns and drugs. As a result of the Task Force’s seizure, Defendant allegedly agreed to

cooperate with the authorities and volunteered to provide them with purported information on drug trafficking.¹

Plaintiffs allege that on January 6, 1995, February 3, 1995, and February 8, 1995, Defendant provided materially false information to the Task Force; specifically that Defendant had been to Columbia, South America with William Strube to make arrangements to smuggle cocaine to the United States. Plaintiffs believe that Defendant has never been to Columbia, South America, and at the least, has never been there with William Strube. Plaintiffs contend that Defendant's alleged misrepresentations were the "proximate and sole" cause for a major investigation into the Plaintiffs' affairs. Plaintiffs believe that Defendant continued to make misrepresentations to "the authorities" that lead to their prosecution and eventual conviction.

William Strube was subject to a four-count Indictment in the United States District Court for the Middle District of Pennsylvania on April 29, 1997. Upon conviction by jury verdict, William Strube was sentenced to 360 months in prison. Defendant acknowledges that he was a confidential informant for the United States Government in this prosecution.

On October 7, 1997 Plaintiffs were both subject to an indictment filed in the United States District Court for the Eastern District of Pennsylvania. William Strube entered a plea of guilty to three counts of unlawful possession of 44 firearms, and Star Strube entered a plea of guilty to one count of aiding and abetting. On June 16, 1998, William Strube was sentenced to 78 months in prison and Star Strube was sentenced to five years probation, the first

1. Plaintiffs do not know precisely which promises and offers were made by the parties involved in the cooperation agreement.

twelve months being under house arrest. Defendant acknowledges that he was a confidential informant for the United States Government in this prosecution.

In seeking damages in excess of \$50,000,000, Plaintiffs' Complaint alleges that Defendant violated Plaintiffs' Fourth, Fifth, and Sixth Amendment constitutional rights while acting as a government informant. Plaintiffs further contend that such constitutional violations are also in violation of the Pennsylvania Constitution, and are subject to this Court's pendant jurisdiction. Before the Court is Defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12 (b)(6).

II. STANDARD

“A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997). That is, a reviewing court must “refrain from granting a dismissal unless it is certain that no relief can be granted under any set of facts which could be proved.” Schuylkill Energy Resources, Inc. v. Pennsylvania Power & Light Co., 113 F.3d 405, 412 n.5 (3d Cir.) (quoting Fuentes v. South Hills Cardiology, 946 F.2d 196, 201 (3d Cir. 1991)), cert. denied, 118 S. Ct. 435 (1997). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. DISCUSSION

Plaintiffs' Complaint alleges that Defendant violated Plaintiffs' civil rights under 42 U.S.C. § 1983. Section 1983 of Title 42 of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983.

In order to bring a successful § 1983 claim, a plaintiff must demonstrate that: (1) the challenged conduct was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. Olender v. Township of Bensalem, 32 F.Supp.2d 775, 782 (E.D.Pa. Jan. 5, 1999); Parratt v. Taylor, 451 U.S. 527, 535 (1981). However, in Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme Court stated, "the issue with respect to monetary damages challenging conviction is . . . whether the claim is cognizable under § 1983 at all." Id. at 483. Therefore, in light of the Supreme Court's ruling in Heck, it is not possible for this Court to conclude that Plaintiffs' § 1983 claim is cognizable.

In order for a plaintiff 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.

Id. at 487. Therefore, as in Heck, when a prisoner seeks damages in a § 1983 setting, this Court must consider whether a judgment in Plaintiffs' favor would imply the invalidity of their convictions or sentences. Id. The United States Supreme Court dictates that if this is the case, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. Id.

The case at bar is similar to Heck, in that, Plaintiffs are seeking monetary damages pursuant to Defendant's alleged misconduct. However, the Complaint fails to establish that Plaintiffs' convictions have 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." Id. Plaintiffs entered pleas of guilt to the Indictment filed in the Eastern District of Pennsylvania, thereby admitting criminal culpability. Further, William Strube was convicted after a jury trial on the Indictment filed in the Middle District of Pennsylvania. Plaintiffs may not now use a civil suit of this sort to appeal the credibility of their respective criminal prosecutions and convictions.

IV. CONCLUSION

Plaintiffs have failed to state a claim upon which relief can be granted under any set of facts which could be proved. Therefore, the Defendant's Motion to Dismiss the Complaint will be granted with prejudice. An appropriate Order follows.

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

WILLIAM MICHAEL STRUBE and	:	
STAR NADA STRUBE,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 99-2390
	:	
JORDAN LOUIS MORALES,	:	
Defendant.	:	

ORDER

AND NOW, this 12th day of October, 1999, upon consideration of Defendant Jordan Louis Morales’s Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, and Plaintiffs’ response thereto, it is hereby ORDERED that said Motion is GRANTED, and the complaint is DISMISSED. The Court declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims which may be alleged in the Complaint.

BY THE COURT:

RONALD L. BUCKWALTER, J.