

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

NATHANIEL PARKER, SR.	:	CIVIL ACTION
	:	
v.	:	
	:	
MICHAEL R. STILES, United	:	
States Attorney, MIKE	:	
FISHER, Pennsylvania	:	
Attorney General, and	:	
ANTHONY SARCIONE,	:	
District Attorney of	:	
Chester County	:	No. 00-5334

MEMORANDUM ORDER

Plaintiff is a federal inmate. He has asserted claims pursuant to 42 U.S.C. § 1983 arising out of his arrest on state charges and his subsequent conviction on related federal charges which he asserts deprived him of due process and violated the proscription against double jeopardy. Plaintiff is asking for damages, a declaration that defendants have violated his constitutional rights and an order directing his immediate release and barring any further prosecution of him.

The pertinent facts as alleged in the complaint are as follow. On November 24, 1998, plaintiff was arrested by police in Chester County on charges of possession of a controlled substance with intent to deliver. After being detained, plaintiff was released on bail from Chester County Prison in October 1999. He was again arrested by police in Chester County on February 1, 2000 while on bail on new drug charges and was detained. Three of these charges were dismissed at a preliminary

hearing by defendant Anthony Sarcione's office and plaintiff was held for trial on two charges by the Chester County Common Pleas Court. The case against plaintiff was adopted by the United States Attorney and the two pending state charges against him were dismissed nolle prosequi on May 4, 2000 at which time he was released by Chester County to federal custody.<sup>1</sup>

It appears from court records that plaintiff was subsequently found guilty in a federal jury trial on twelve counts of drug offenses in violation of 21 U.S.C. §§ 841(a)(1) and 860(a).

Plaintiff alleges that the filing of federal charges after the state charges were dismissed nolle prosequi violated his protection against double jeopardy. Plaintiff further alleges that the federal prosecution has deprived him of liberty without due process because the federal government is "without authority and jurisdiction to detain and prosecute" him because the indictment did not set forth facts to show that he interfered with interstate commerce and he was charged under Title 21 which "is a civil statute and not a criminal statute." Plaintiff also alleges that "defendants are in violation under Title 18 U.S.C.

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<sup>1</sup>"Nolle prosequi is the voluntary withdrawal by a prosecuting attorney on a particular criminal bill or information, which at anytime in the future can be lifted upon appropriate motion in order to permit a revival of the original criminal bill or information." See Commonwealth v. Ahearn, 670 A.2d 133, 135-36 (Pa. 1996).

§ 245(a)(1)," apparently because his federal prosecution was not authorized in writing by the Attorney General or other specified Department of Justice official.

Defendant Sarcione has moved to dismiss plaintiff's claims against him on the ground of prosecutorial immunity.

A motion to dismiss tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988). A claim may be dismissed when it appears from the factual allegations that it is subject to an asserted defense of immunity. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 83, 86 n.6 (3d Cir. 1997); Moser v. Bascelli, 865 F. Supp. 249, 252 (E.D. Pa. 1994).

A prosecutor is immune from civil liability for damages under § 1983 if the ultimate act complained of is within the scope of a prosecutor's official function. Imbler v. Peltzman, 424 U.S. 409, 431 (1976). Prosecutors are absolutely immune from liability for acts that are "intimately associated with the judicial phase of the criminal process." Id. at 430. Such acts include initiating and prosecuting a criminal case. Id. at 431 (prosecutor absolutely immune from liability for decision to

prosecute); Kulwicki v. Dawson, 969 F.2d 1454, 1463-64 (3d Cir. 1992) (prosecutor protected by absolute immunity for initiation of charges even when he lacks belief that any wrongdoing occurred); Parker v. Shefsko, 1999 WL 248316, \*1 (E.D. Pa. Apr. 23, 1999) (prosecutor's decision to initiate and prosecute criminal charges is subject to absolute immunity from §§ 1983 and 1985 suits). A decision not to prosecute is also protected by absolute immunity. Roe v. City & County of San Francisco, 109 F.3d 578, 583 (9th Cir. 1997) (prosecutor is absolutely immune for decision not to prosecute); Doe v. Phillips, 81 F.3d 1204, 1209-10 (2d Cir. 1996) (same); Harrington v. Almy, 977 F.2d 37, 40-42 (1st Cir. 1992) (same). Mr. Sarcione is immune from liability for any decision to initiate or dismiss charges against plaintiff.

Plaintiff also has alleged no facts which would entitle him to any injunctive or declaratory relief against defendant. There is no suggestion that any further state proceedings, improper or otherwise, are pending or imminent. See, e.g., Carter v. Chief of Police, 437 F.2d 413, 415 (3d Cir. 1971); Panayotides v. Rabenold, 35 F. Supp.2d 411, 417 (E.D. Pa. 1999).<sup>2</sup>

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<sup>2</sup>Also, the court may not interfere with any ongoing state criminal proceedings. See Quakenbush v. Allstate Ins. Co., 517 U.S. 706, 716-17 (1996) (Younger abstention covers injunctive and declaratory judgment actions); Olde Discount Corp. v. Tupman, 1F.3d 202, 211-212 (3d Cir. 1993) (Younger abstention doctrine applies to injunctions against ongoing state criminal proceedings); Nernberg v. City of Pittsburgh, 50 F. Supp. 2d 437, 440-41 (W.D. Pa. 1999) (Younger prevents court from enjoining possible state prosecution of plaintiff).

It is also clear that neither Mr. Sarcione nor any other defendant has violated any federally secured right of plaintiff.

**ACCORDINGLY**, this                    day of June, 2001, upon consideration of defendant Sarcione's Motion to Dismiss (Doc. #4) and plaintiff's response, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and all claims herein against defendant Anthony Sarcione are **DISMISSED** and he is terminated as a defendant in this action.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**