

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

EDWIN WALKER : CIVIL ACTION  
: :  
v. : :  
: :  
MICHAEL FISHER, Individually :  
and as ATTORNEY GENERAL, et al. : No. 01-0578

MEMORANDUM ORDER

Plaintiff, an inmate at SCI Dallas, has filed this action pursuant to 42 U.S.C. § 1983 against the state judges, investigators, prosecutors and witnesses involved in a criminal prosecution which resulted in plaintiff's conviction on September 27, 1999 in the Luzerne County Court of Common Pleas for controlled substance offenses. Plaintiff alleges that the police falsely arrested and imprisoned him, planted evidence and searched his home in Philadelphia pursuant to an illegal warrant, that witnesses gave perjured testimony against him, that the prosecutors knowingly permitted the introduction of perjured testimony and that the judicial defendants variously issued an arrest warrant based on fabricated evidence and failed to investigate to learn that the other defendants had conspired to deprive plaintiff of his constitutional rights.

Presently before the court is the motion of the Honorable Joseph M. Augello, the Honorable Patrick Toole, the Honorable G. Thomas Gates and District Justice Paul J. Roberts to dismiss plaintiff's complaint.

Dismissal for failure to state a claim is appropriate when it clearly appears that plaintiff can prove no set of facts to support the claim which would entitled him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion 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 claim 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).

Plaintiff complains that Judge Toole knowingly failed to prevent prosecutors from violating plaintiff's rights. He complains that District Justice Roberts knowingly permitted prosecutors to present tainted evidence. Plaintiff alleges that Judge Augello denied plaintiff a fair trial and issued an arrest warrant without conducting an investigation which would have revealed that grand jury witnesses committed perjury. Plaintiff complains that Judge Gates neglected the evidence and permitted the case against plaintiff to be removed from Philadelphia to Luzerne County.



Augello, The Honorable Patrick Toole, The Honorable G. Thomas Gates and District Justice Paul J. Roberts (Doc. #9), and in the absence of any response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that all claims against the moving defendants are **DISMISSED** and they shall be terminated as party defendants herein.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**