

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

MR. MAURICE KING WHICHARD : CIVIL ACTION
 :
v. :
 :
JUDGE MR. GARY S. GLAZER, et al. : NO. 04-4158

M E M O R A N D U M

DIAMOND, J.

DECEMBER 1, 2004

Plaintiff, a prisoner acting pro se, brings this civil rights action against Judge Gary S. Glazer of the Philadelphia Common Pleas Court, the City of Philadelphia, the Commonwealth of Pennsylvania, and Philadelphia Police Detective John Rossiter. 42 U.S.C. § 1983. With his Complaint, Plaintiff filed a request for leave to proceed in forma pauperis.

I grant Plaintiff's request to proceed in forma pauperis, and dismiss his Complaint as legally frivolous.

I. LEGAL STANDARDS

A district court may "dismiss as frivolous claims based on an indisputably meritless legal theory and claims whose factual contentions are clearly baseless." Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (citing Neitzke v. Williams, 109 S.Ct. 1827, 1833, 490 U.S. 319, 104 L. Ed. 2d 338 (1989)) (applying predecessor to 28 U.S.C. § 1915(e)(2)(B)). "Within the former category fall those cases in which either it is readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit; within the latter are those cases describing scenarios

clearly removed from reality." Roman, 904 F.2d at 194 (citation omitted).

Courts are obligated to construe *pro se* pleadings liberally to ensure that *pro se* litigants are afforded proper deference. Castro v. Chesney, No. 97-4983, 1998 U.S. Dist. LEXIS 17278, *26 (E.D. Pa. Nov. 3, 1998) (citing Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972)). "[P]ro se plaintiffs . . . are entitled to even greater deference when the sufficiency of their pleadings are called into question." Boone v. Chesney, No. 94-3293, 1994 U.S. Dist. LEXIS 12339, at *1 (E.D. Pa. Sept. 2, 1994) (citing Haines; Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980)).

II. DISCUSSION

Plaintiff's Complaint is exceedingly difficult to understand. Construing the allegations as liberally as I can, Plaintiff apparently alleges that Detective Rossiter falsely arrested him in 1996, and that Judge Glazer improperly changed the criminal charges Plaintiff then faced. Plaintiff seeks compensatory damages.

A. Claims against Judge Gary S. Glazer

State court judges have absolute immunity from § 1983 lawsuits for money damages based on actions the judges took in their judicial capacity. Stump v. Sparkman, 435 U.S. 349 (1978); Wilson v. Secret Service, et al, No. 88-2005, 1988 U.S. Dist. LEXIS 9554, *10 (E.D. Pa. Aug. 10, 1988). Plaintiff appears to base his allegations against Judge Glazer on actions the Judge took in his judicial capacity respecting Plaintiff's criminal

case. Accordingly, Judge Glazer has absolute immunity, and I must dismiss the claims against him.

B. Municipal Liability

Municipal liability cannot be imposed absent an allegation that unlawful actions were taken pursuant to a municipality's policies, practices, customs, regulations, or enactments. Monell v. Department of Social Services, 436 U.S. 658 (1978). There are no such allegations in Plaintiff's Complaint. Accordingly, I must dismiss Plaintiff's claims against the City of Philadelphia.

C. Claims against the Commonwealth of Pennsylvania

The United States Constitution prohibits actions for damages against a state in federal court unless the state has waived its immunity. U.S. Const. amend. XI; Edelman v. Jordan, 415 U.S. 651, 663 (1974) ("a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment"). There is no applicable waiver of state immunity in this case. Moreover, the Supreme Court has held that the states may not be sued under §1983, because "[a] state is not a person within the meaning of § 1983." Will v. Michigan Dept. of State Police, 491 U.S. 58, 64 (1989). In these circumstances, I must dismiss Plaintiff's claims against the Commonwealth of Pennsylvania.

D. Claims against Detective John Rossiter

Plaintiff bases his allegations on Detective Rossiter on events that allegedly occurred in 1996. The Supreme Court has held that §1983 claims are most analogous to common law tort

actions, and are subject to the state statute of limitations for personal injury actions. See Owens v. Okure, 488 U.S. 235 (1989). The Pennsylvania statute of limitations for personal injury actions is two years. See 42 Pa. Cons. Stat. Ann. § 5524. Plaintiff filed his Complaint on September 2, 2004, well outside the two year limitations period. He is, thus, time barred from bringing this action against Detective Rossiter.

III. CONCLUSION

Plaintiff has advanced "indisputably meritless" legal theories. Neitzke v. Williams, 490 U.S. 319, 327 (1989). Accordingly, I dismiss his Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). An order dismissing the Complaint follows.

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O R D E R

AND NOW, this 1st day of December, 2004,

IT IS ORDERED that:

1. Leave to proceed in forma pauperis is GRANTED.
2. This action is **DISMISSED AS FRIVOLOUS** pursuant to 28 U.S.C. § 1915(e)(2)(B), for the reasons stated in the accompanying Memorandum filed this day.

The Clerk of Court shall close this matter for statistical purposes.

AND IT IS SO ORDERED.

BY THE COURT:

PAUL S. DIAMOND, J.