

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

PEDRO L. DEJESUS, <u>PRO SE</u> ,	:	
	:	
v.	:	
	:	
COMMONWEALTH OR STATE OF	:	
LANCASTER COUNTY	:	
CHILDREN & YOUTH SERVICES	:	No. 04-2737

Memorandum and Order

Gene E.K. Pratter, J.

August 31, 2005

Defendants Robin Boxer, Children and Youth Service Agency, Lancaster County, Fran Presely, Amanda Rosh, and the Commonwealth of Pennsylvania Probation and Parole Department (collectively, the “Defendants”) move to dismiss this Section 1983 action. The pro se plaintiff is Pedro DeJesus. Mr. DeJesus is currently an inmate at Lancaster County Prison. For the reasons discussed below, the Motion will be granted in part without prejudice to Mr. DeJesus to pursue a portion of his claim should his circumstances permit him to do so.

FACTS AND PROCEDURAL BACKGROUND

This Section 1983 claim arises from the arrest and prosecution of Pedro DeJesus. Mr. DeJesus was charged with rape, involuntary deviate sexual intercourse, aggravated indecent assault and incest, all charges which arise from the rape of his 12-year old daughter. Mr. DeJesus pleaded guilty on February 5, 2005 to each of the counts with which he was charged.

Mr. DeJesus filed his initial Complaint alleging a violation of Section 1983 on July 7, 2004. Defendants filed a Motion to Dismiss the Complaint or, in the Alternative, for a More Definite Statement on August 17, 2004, and Mr. DeJesus filed a motion seeking appointment of

counsel on September 1, 2004. After reviewing the Complaint and construing it liberally,¹ the Court granted Mr. DeJesus's Motion for Appointment of Counsel, denied Defendants' Motion to Dismiss the Complaint, and granted Defendants' request for Mr. DeJesus to file an amended complaint containing a more definite statement of his claims. Unfortunately, no counsel came forward to advocate on behalf of Mr. DeJesus. Mr. DeJesus filed his Amended (pro se) Complaint on February 10, 2005.² Defendants now move to dismiss the Amended Complaint.

Although he has pleaded guilty to the crimes of which he was charged, Mr. DeJesus insists that he is innocent³ and was coerced into pleading guilty. Response to Motion to Dismiss at 1 ("I was coached to plead guilty"). Mr. DeJesus further asserts that because his guilty plea was a product of ineffective assistance of counsel, he is appealing his conviction, presumably within the state court system. Response to Motion to Dismiss at 1. In requesting relief pursuant

¹ A court should consider a complaint filed by a pro se party in a liberal manner. See Alston v. Parker, 363 F3d 229, 234 (3d Cir. 2004).

² The Amended Complaint was filed five days after Mr. DeJesus pleaded guilty to the crimes with which he was charged and which are the subject of his suit.

³ In his various submissions to the Court, Mr. DeJesus suggests that he believes his daughter was raped by an individual known to him and his family, and that his daughter and ex-wife have accused him of the crime, and that Children and Youth Services conducted an erroneous investigation and concluded that Mr. DeJesus should be accused of the crime. Complaint. In the Complaint, as well as in other documents subsequently submitted to the Court, Mr. DeJesus repeatedly asserts that he could not have committed the crime with which he was charged because he was in prison at the time the alleged rapes occurred. Thus, Mr. DeJesus alleges that he was falsely charged with raping his daughter as a result of a flawed investigation by the Department of Children & Youth Services ("CYS"). August 18, 2004 Letter to the Court ("August 18 Letter"). Mr. DeJesus alleges that CYS ignored witnesses and evidence that would have exculpated him. Complaint; August 18 Letter. Moreover, Mr. DeJesus alleges that he was neither questioned nor investigated by the police before he was charged with the crime. August 18 Letter. Finally, Mr. DeJesus appears to allege that his parole agent, an individual he names as Fran Presely, violated his right to privacy by improperly disclosing confidential information. August 18 Letter.

to Section 1983, Mr. DeJesus asks that this Court dismiss his criminal case and appoint counsel for him. Response to Motion to Dismiss at 2. Mr. DeJesus further requests money damages for the violation of his constitutional rights. Response to Motion to Dismiss at 3. In moving for the dismissal of the Amended Complaint, Defendants argue that (1) because he has pleaded guilty to the charges, Mr. DeJesus cannot now seek damages pursuant to Section 1983; and (2) because his arrest was a matter of public record, Mr. DeJesus had no reasonable expectation that the arrest would remain a private matter.⁴

DISCUSSION

A. Standard of Review

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

To establish a valid claim, the Federal Rules of Civil Procedure require that a plaintiff must provide “a short and plain statement of the claim that will give the defendant fair notice of

⁴ Defendants also note that the Amended Complaint in this case was never properly served. See Docket Entry No. 21. Despite this error, counsel for Defendants entered an appearance and filed the present Motion. Therefore, the Court will address the substance of the parties’ arguments.

what the plaintiff's claim is and the grounds upon which it rests." Weston v. Pennsylvania, 251 F.3d 420, 429 (3d Cir. 2001). In considering a motion to dismiss, a court should construe a plaintiff's claim "so as to do substantial justice," and pro se complaints in particular are to be liberally construed. Alston v. Parker, 363 F3d 229, 234 (3d Cir. 2004).

B. Substantive Claims

Although his Complaint is difficult to assess, Mr. DeJesus appears to allege that his rights conferred by the Fourth Amendment have been violated in two ways.⁵ The first claim Mr. DeJesus presents is that because he was arrested without there having been a properly conducted investigation of the events that occurred and where there was clear evidence that he could not have committed the crime, his constitutional rights were violated. Mr. DeJesus further appears to assert that the disclosure to an investigator for Lancaster County Department of Children and Youth of dates during which Mr. DeJesus was confined to prison violated his right to privacy. Each of these claims will be examined separately.

1. Wrongful Arrest/Conviction

The United States Supreme Court has advised that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release." Heck v. Humphrey, 512 U.S. 477, 481 (1994). Additionally, if a district court must necessarily consider the validity of a state prisoner's conviction to determine the outcome of a claim for damages brought under Section 1983, the claim cannot proceed in federal court unless the plaintiff demonstrates that the conviction or sentence has already been

⁵ As Defendants point out in the Motion to Dismiss, a claim for false arrest alleges a violation of rights conferred by the Fourth, and not the Fourteenth, Amendment. Albright v. Oliver, 510 U.S. 266, 270 (1994).

invalidated. Heck, 512 U.S. at 487. Thus, to the extent that Mr. DeJesus seeks *immediate relief from his conviction*, his claim must be presented as a petition for a writ of habeas corpus, and to the extent that Mr. DeJesus seeks *damages for a violation of his constitutional rights*, the Court must consider whether resolving the alleged constitutional violations requires the Court to consider the validity of his conviction. After a close inspection of the assertions Mr. DeJesus presents in support of his “false arrest/conviction” claim, the Court concludes that this claim necessarily implicates the validity of Mr. DeJesus’s state court conviction. As a result, this claim must be dismissed.⁶

2. Right to Privacy with Respect to Imprisonment Dates

Mr. DeJesus next asserts that because the dates during which he was imprisoned on charges unrelated to those in the present matter was private information, Fran Presely, his parole officer, violated Mr. DeJesus’s right to privacy by disclosing this information to the Lancaster County Department of Children and Youth Services during the course of its investigation.⁷ In the Motion to Dismiss, Defendants argue that because Mr. DeJesus had no reasonable expectation of privacy with respect to the fact *or* dates of his previous incarceration, he cannot now assert a violation of his right to privacy.

Although some confidential information is protected under the “confidentiality branch” of the right to privacy, an individual has no reasonable expectation of privacy with regard to

⁶ The Court notes that in his response to the Motion to Dismiss, Mr. DeJesus indicates that he is in the process of appealing his conviction which occurred by way of his guilty plea. Allowing for the possibility that his guilty plea conviction may at some later date be reversed, this claim will be dismissed without prejudice.

⁷ Mr. DeJesus also asserts that Mr. Presely disclosed incorrect dates to the Children and Youth Services agent.

information that is contained in a public record. See Scheetz v. The Morning Call, Inc., 946 F.2d 202, 206-07 (3d Cir. 1991). Public records include criminal case dispositions, such as convictions or mistrials. Pension Benefit Guaranty Corp. v. White Consol. Industries, Inc., 998 F.2d 1192, 1197 (3d Cir. 1993). Thus, information about the dates of incarceration regarding a previous conviction and arrest would be considered a matter of public record, and, therefore, Mr. DeJesus has no reasonable expectation of privacy with respect to this information. As a result, this claim will be dismissed with prejudice.

CONCLUSION

For the reasons discussed above, the claim that Mr. DeJesus presents with respect to the validity of his arrest and subsequent guilty plea will be dismissed without prejudice, and the claim with respect to an alleged violation by Mr. Presely of Mr. DeJesus's right to privacy with respect to the dates that Mr. DeJesus was previously incarcerated will be dismissed with prejudice. An appropriate Order follows.

/S/ _____
Gene E.K. Pratter
United States District Judge

August 31st, 2005

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COMMONWEALTH OR STATE OF	:	
LANCASTER COUNTY	:	
CHILDREN & YOUTH SERVICES	:	No. 04-2737

ORDER

AND NOW, this 31st day of August, 2005, upon consideration of the Motion of the Defendants to Dismiss the Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Docket No. 18) and the response thereto (Docket No. 20), it is **ORDERED** that the Motion is **GRANTED**. The claim of Mr. DeJesus with respect his arrest and prosecution is **DISMISSED** without prejudice to allow for Mr. DeJesus to continue to pursue an appeal in state court; and the claim of Mr. DeJesus against Fran Presely with respect to invasion of privacy is **DISMISSED** with prejudice. The Clerk of Court is instructed to close this case.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
United States District Judge