

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

NATHANIEL PARKER, SR. : CIVIL ACTION
 :
 v. :
 :
 RITA SHEFSKO, ET AL. : No. 98-5811

ORDER-MEMORANDUM

AND NOW, this 23rd day of April, 1999, defendants' motions to dismiss are ruled on as follows:

1. Defendant District Attorney Anthony Sarcione's motion to dismiss - granted. Fed. R. Civ. P. 12(b)(6). Inasmuch as plaintiff Nathaniel Parker, Sr.'s complaint arises from the prosecutor's decision to initiate and prosecute criminal charges, there is absolute immunity from liability under §§ 1983 and 1985. See Kulwicki v. Dawson, 969 F.2d 1454, 1462 (3d Cir. 1992) ("The decision to initiate a prosecution is at the core of a prosecutor's judicial role A prosecutor is absolutely immune when making this decision, even when he acts without a good faith belief that any wrong-doing has occurred.") (citing Imbler v. Pachtman, 424 U.S. 409, 430-31, 96 S.Ct. 984, 994-96, 47 L.Ed.2d 128 (1976)).¹

¹"Absolute immunity for prosecutorial functions only applies in a suit for money damages." Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 462 (3d Cir. 1996). The request for declaratory and injunctive relief will also be dismissed, however. To the extent that plaintiff seeks declaratory and injunctive relief as to on-going criminal proceedings, the Younger abstention doctrine precludes this court from intervening. See Younger, 401 U.S. at 41, 91 S.Ct. at 749, 27, L.Ed.2d 669 (1971); Samuels v. Mackell, 401 U.S. 66, 73, 91 S.Ct. 764, 768, 27 L.Ed.2d 688 (1971)

2. The motion to dismiss of defendant officers Shefsko, Wilson, Quinn, Cannell, Detweiler, and Pawling (Coatesville officers) - granted as to the claims for false arrest and malicious prosecution under §§ 1983 and 1985. Fed. R. Civ. P. 12(b)(6). As criminal proceedings against plaintiff are on-going, an essential element of these causes of action - that the proceedings terminated in plaintiff's favor - is missing. See Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S.Ct. 2364, 2372, 129 L.Ed.2d 383 (1994). See also Nelson v. Delaware County, 1997 WL 793060, *3 (E.D. Pa. Dec. 9, 1997); Cunningham v. Young, 1997 WL 374173, *2 (Jan. 28, 1997).

3. Coatesville officer defendants' motion to dismiss or for a more definite statement as to the claim for assault and battery under §§ 1983 and 1985 - denied with respect to officers Canal, Detweiler, and Pawling.² The asserted facts are sufficient to provide notice of the claims against them - and some latitude is required for pro se plaintiffs. See Holley v. Dept. of Veteran Affairs, 165 F.3d 244, 247 (3d Cir. 1999).

By May 14, 1999, plaintiff shall advise in writing whether he

(extending abstention doctrine to requests for declaratory relief). See also O'Neill v. City of Philadelphia, 32 F.3d 785, 786 n.1 (3d Cir. 1994) (issue of abstention may be raised sua sponte). Alternatively, if plaintiff seeks his release from custody, he must petition for a writ of habeas corpus. See Urrutia, 91 F.3d at 462. Any relief as to future criminal proceedings can be made only upon a showing by plaintiff that the feared future events are "real and substantial, of sufficient immediacy and reality to warrant the issuance of [equitable relief]." Presbytery of N.J. of the Orthodox Presbyterian Church v. Florio, 40 F.3d 1454, 1466 (3d Cir. 1994) (citations omitted).

²The allegations of assault and battery set for in amended complaint ¶ 4(a) name only these three defendants.

wants to proceed at this time with his claim for assault and battery. Otherwise, the entire action, without more, will be dismissed. Plaintiff's request to place the action in suspense pending resolution of the criminal charges against him is denied.

Edmund V. Ludwig, J.