

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JOHN M. DINUNZIO	:	
	:	
v.	:	
	:	Civil No. 3:03 CV 1058 (CFD)
STATE OF CONNECTICUT,	:	
DEPARTMENT OF CORRECTIONS	:	

RULING AND ORDER

The petitioner, a state prisoner, has filed this action pro se and in forma pauperis seeking a writ of mandamus compelling the Connecticut Department of Correction to comply with an agreement apparently reached in a state habeas petition concerning medical treatment of inmates, including petitioner. For the reasons that follow, this action is dismissed.

The plaintiff has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915 (e)(2)(B)(i) - (iii). Thus, the dismissal of a complaint by a district court under any of the three enumerated sections in 28 U.S.C. § 1915(e)(2)(B) is mandatory rather than discretionary. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

"When an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 1915 (e)(2)(B)(i) even if the complaint fails to

‘flesh out all the required details.’” Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (quoting Benitez, 907 F.2d at 1295).

An action is "frivolous" when either: (1) "the ‘factual contentions are clearly baseless,’ such as when allegations are the product of delusion or fantasy;" or (2) "the claim is ‘based on an indisputably meritless legal theory.’" Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)). A claim is based on an "indisputably meritless legal theory" when either the claim lacks an arguable basis in law, Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995).

Livingston, 141 F.3d at 437. The court exercises caution in dismissing a case under § 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

A district court must also dismiss a complaint if it fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal . . . (ii) fails to state a claim upon which relief may be granted"); Gomez, 202 F.3d at 596 ("Prison Litigation Reform Act . . . which redesignated '§ 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory"). In reviewing the complaint, the court "accept[s] as true all factual allegations in the complaint" and draws inferences from these allegations in the light most favorable to the plaintiff. Gomez, 202 F.3d at 596 (citing King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) is only appropriate if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In addition, "unless the court can rule out any possibility, however

unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

Mandamus is an extraordinary remedy which requires compelling circumstances. United States v. Helmsley, 866 F.2d 19, 22 (2d Cir.), cert. denied, 490 U.S. 1004 (1989). Actions in the nature of mandamus are appropriate vehicles for prisoners to seek enforcement of constitutional and statutory duties owed to them by federal officials. However, the federal mandamus statute does not authorize an action to compel a state or its officials to perform a particular duty. See Hernandez v. United States Attorney General, 689 F.2d 915, 917 (10th Cir.1982) (federal court lacks jurisdiction to issue writ of mandamus to compel action by state court or state prison); Lebron v. Armstrong, 2003 WL 22283809 (D. Conn. September 29, 2003); Robinson v. People of the State of Illinois, 752 F. Supp. 248 (N.D. Ill. 1990) (finding that federal mandamus statute does not apply to actions against the state itself).

Petitioner seeks a writ of mandamus against the State of Connecticut Department of Correction. Because the court lacks jurisdiction to issue a writ of mandamus against state officials, this case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is certified that any appeal in forma pauperis from this order would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a).

SO ORDERED this 21st day of May 2004, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE