

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JOHN W. MURPHY :  
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 :  
 v. :  
 : PRISONER  
 STATE OF CONNECTICUT, PAUL E. : CASE NO. 3:04CV133(CFD)  
 MURRAY, JOHN ARMSTRONG, :  
 WARDEN MARK STRANGE, :  
 DOCTOR BLANCHETT and :  
 TRESHA LANTZ :

RULING AND ORDER

The plaintiff, John W. Murphy (“Murphy”), an inmate currently confined at the State of Connecticut Enfield Correctional Institution, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. Murphy was convicted in the Connecticut Superior Court of the state offenses of Assault in the First Degree, Criminal Possession of a Firearm and Commission of a Felony with a Firearm and received a sentence of fifteen years’ incarceration. Murphy alleges that he pled guilty under the Alford<sup>1</sup> doctrine with the understanding that he would receive treatment for hepatitis C while incarcerated. The judgment mittimus, dated October 10, 1996, states “Court orders defendant to be treated for Hepatitis ‘C’”. Murphy alleges that he has not received this treatment and asks this court to order that he be released from prison, vacate his plea, and tried for the state charges. In addition, he seeks punitive damages. The Defendants are the state prosecutor, the state corrections commissioner and various corrections officers. For the reasons that follow, the complaint is dismissed without prejudice.

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<sup>1</sup>Alford v. North Carolina, 400 U.S. 25 (1970).

I. Standard of Review

Murphy has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. When the court grants in forma pauperis status, section 1915 requires the court to conduct an initial screening of the complaint to ensure that the case goes forward only if it meets certain requirements. “[T]he 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).

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, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (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 v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998). The court construes pro se complaints liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Thus, “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, 141 F.3d at 437 (quoting Benitez, 907 F.2d at 1295). The court exercises caution in dismissing a case under section 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”); Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000) (“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. Cruz, 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).

## II. Discussion

In order to state a claim for relief under 42 U.S.C. § 1983, Murphy must satisfy a two-part test. First, he must allege facts demonstrating that the defendants are persons acting under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

A. Injunctive Relief

As mentioned above, Murphy asks the court to order his immediate release from prison. He also seeks a trial on the state charges. Thus, the court interprets the complaint as requesting permission to withdraw his plea as well.

A claim for injunctive relief challenging a conviction, however, is not cognizable in a civil rights action. “A state prisoner may not bring a civil rights action in federal court under [section] 1983 to challenge either the validity of his conviction or the fact or duration of his confinement. Those challenges may be made only by petition for habeas corpus.” Mack v. Varelas, 835 F.2d 995, 998 (2d Cir. 1987) (citing Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973)). Thus, if Murphy seeks to withdraw his plea, have his conviction vacated, or be released from custody, he must file a petition for a writ of habeas corpus.

The court is also unable to construe the complaint as a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. A prerequisite to habeas corpus relief is the exhaustion of all available state remedies. See O’Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney General of the State of New York, 696 F.2d 186, 190 (2d Cir. 1982), cert. denied, 464 U.S. 1048 (1982); 28 U.S.C. § 2254(b)(1)(A). The exhaustion requirement is not jurisdictional; rather, it is a matter of federal-state comity. See Wilwording v. Swenson, 404 U.S. 249, 250 (1971) (per curiam). The exhaustion doctrine is designed not to frustrate relief in the federal courts, but rather to give the state court an opportunity to correct any errors which may have crept into the state criminal process. See id. “Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, . . .

state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." See O'Sullivan, 526 U.S. at 845.

The Second Circuit requires the district court to conduct a two-part inquiry. First, the petitioner must have raised before an appropriate state court any claim that he asserts in a federal habeas petition. Second, he must have "utilized all available mechanisms to secure appellate review of the denial of that claim." Lloyd v. Walker, 771 F. Supp. 570, 573 (E.D.N.Y. 1991) (citing Wilson v. Harris, 595 F.2d 101, 102 (2d Cir. 1979)). "To fulfill the exhaustion requirement, a petitioner must have presented the substance of his federal claims to the highest court of the pertinent state." Bossett v. Walker, 41 F.3d 825, 828 (2d Cir. 1994), cert. denied, 514 U.S. 1054 (1995) (internal citations and quotation marks omitted). See also Pesina v. Johnson, 913 F.2d 53, 54 (2d Cir. 1990) ("[T]he exhaustion requirement mandates that federal claims be presented to the highest court of the pertinent state before a federal court may consider the petition."); Grey v. Hoke, 933 F.2d 117, 119 (2d Cir. 1991) (same).

Murphy does not allege facts in his complaint suggesting that he has exhausted his state court remedies before commencing this action. Thus, the court cannot construe this complaint as a petition for a writ of habeas corpus.

#### B. Damages

Murphy also seeks damages from defendants for the alleged violation of his plea agreement. If the court were to rule in Murphy's favor on this claim, however, the validity of his conviction necessarily would be called into question.

[I]n order to recover damages for [an] allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [section] 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has **not** been so invalidated is not cognizable under [section] 1983. Thus, when a state prisoner seeks damages in a [section] 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction has already been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnote omitted). Murphy has not shown that his conviction has been invalidated. Thus, he fails to state a claim for damages cognizable under section 1983 and the court concludes that any amendment would be futile. The claims for punitive damages are dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

### III. Conclusion

The complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Any appeal from this order would not be taken in good faith. The Clerk is directed to close this case.

In light of this ruling, Murphy's motion for appointment of counsel [**doc. #4**] is **DENIED** as moot.

**SO ORDERED** this 24<sup>th</sup> day of September, 2004, at Hartford, Connecticut.

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