UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THADDEUS TAYLOR

PRISONER

V. CASE NO. 3:05CV288(DJS)

CHRISTOPHER L. MORANO, ET AL.[1]

RULING AND ORDER

Plaintiff Thaddeus Taylor, currently an inmate in a state prison facility in Cranston, Rhode Island, brings this action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915 and asserts causes of action under 42 U.S.C. §§ 1983, 1985 and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962, 1964. For the reasons set forth below, the complaint is dismissed.

I. Facts

The plaintiff alleges that in January 1995, he was arrested on federal criminal charges and released on bond. In March 1995, the Department of Correction terminated his employment as a correctional officer. In April 1995, the federal court revoked plaintiff's bond and issued an order of detention. The plaintiff was temporarily

[1] The other named defendants are: Attorney Timothy Moynahan, Attorney Martin Minnella, Attorney Stephen Ruskin, Attorney Frederic Mascolo, Chief Clerk of the Connecticut Supreme Court Francis Drumm, Judge Robert Holzberg, Judge Bethany Alvord, Judge Joseph Gormley, Judge Salvatore Agati, Judge Elizabeth Gallagher, Judge D. Eveleigh, Judge George Levine, Attorney Gail Kotowski, Attorney Carl Fortuna, Attorney Lorraine Eckert, Attorney Paul Hawkshaw, Attorney Daniel B. Horwitch, Attorney Mary Dalton Burgdorff, Attorney Stephen Duffy, John Venditti, Jose Acosta, Jane and John Doe, Dog Warden, Attorney Bethany Karas, Attorney Mark Kostecki, Attorney Jon Berk, Counselor Mattos, C.T.O. Martson and Judge John Langenbach.

housed at the Bridgeport and Hartford Correctional Centers. In May 1995, Connecticut police officers arrested the plaintiff on arson charges in connection with a fire allegedly set by the plaintiff in his cell.

In August 1995, John Armstrong transferred the plaintiff to a federal correctional facility in Rhode Island. The plaintiff traveled from Rhode Island to federal court in Connecticut during his federal criminal trial in September 1995. In late September 1995, the jury found the plaintiff guilty and in April 1996, the court sentenced the plaintiff to 87 months in federal prison.

In May 1996, the Bureau of Prisons transferred the plaintiff to a Connecticut prison facility to enable the State of Connecticut to proceed with its trial on the arson charges against the plaintiff. The plaintiff alleges that he was transferred back and forth between the state prison facilities and the Bureau of Prisons during the pretrial proceedings.

In July 1996, the plaintiff was involved in altercation with two correctional officers at New Haven Correctional Center. At the end of July 1996, plaintiff was arrested on charges of assault on a Department of Correction officer. The plaintiff remained at Connecticut prison facilities during his pretrial and trial proceedings in connection with the arson and assault charges.

In February 1997, a jury found the plaintiff guilty of three counts of assault on an employee of the Department of Correction. In April 1997, the court sentenced the plaintiff to six years of imprisonment. The sentence was to be served consecutively to the plaintiff's federal sentence. In May 1997, the plaintiff pleaded guilty to the arson charge and the court sentenced him to two years of imprisonment. That sentence was

to be served concurrently to the federal sentence.

The plaintiff claims that the defendants have denied his requests for halfway house placement and parole. He also claims that the defendants maliciously prosecuted him because of his race, his former status as a correctional officer and his role as a whistleblower regarding racial discrimination within the Department of Correction.

The plaintiff generally claims that the defendants conspired to convict him, denied him a fair trial, denied him conflict-free counsel, violated provisions of the Interstate Agreement on Detainers, denied him access to the courts and the to the law library, withheld exculpatory evidence, lost court records, prevented him from litigating his claims concerning his convictions, failed to interview witnesses and investigate plaintiff's claims concerning the July 1996 assault charge, failed to provide him with documents, permitted correctional officers to give false testimony, failed to provide the plaintiff with effective assistance of counsel, and influenced the assignment of judges to his state criminal cases.

The plaintiff seeks injunctive and declaratory relief and monetary damages. For the reasons set forth below, the complaint is dismissed.

II. Standard of Review

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 v. Wolf, 907 F.2d 1293, 1295 (2d Cir. 1990)).

> 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, 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"); Cruz, 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. 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).

A district court is also required to dismiss a complaint if the plaintiff seeks monetary damages from a defendant who is immune from suit. See 28 U.S.C. § 1915(e)(2)(B)(iii); Spencer v. Doe, 139 F.3d 107, 111 (2d Cir. 1998) (affirming dismissal pursuant to § 1915(e)(2)(B)(iii) of official capacity claims in § 1983 action because "the Eleventh Amendment immunizes state officials sued for damages in their official capacity").

In order to state a claim for relief under 42 U.S.C. § 1983, the plaintiff must satisfy a two-part test. First, the plaintiff must allege facts demonstrating that the defendant acted under color of state law. Second, the plaintiff must allege facts demonstrating that he has been deprived of a constitutionally or federally protected

right. Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

III. Discussion

The plaintiff asserts claims against the defendants pursuant to 42 U.S.C. §§ 1983 and 1985 and 18 U.S.C. §§ 1962 and 1964. The court addresses the Section 1983 and 1985 claims first.

A. Section 1983 and 1985 Claims

In Connecticut, the general three-year personal injury statute of limitations period set forth in Section 52-577 of the Connecticut General Statutes has been uniformly found to apply to federal civil rights actions. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (applying Connecticut's three year statute of limitations to actions brought pursuant to 42 U.S.C. § 1983); In re State Police Litigation, 888 F. Supp. 1235, 1248-49 (D. Conn. 1995) (same). In addition, the Second Circuit has held that the three-year statute of limitations applies to actions filed pursuant to 42 U.S.C. § 1985. See Cornwell v. Robinson, 23 F.3d 694, 703 (2d Cir.1994) (statute of limitations for actions brought pursuant to Sections 1983 and 1985 is three years).

Here, the plaintiff filed this action on February 14, 2005. The allegations in the complaint concerning his arrests and convictions on federal and state charges during a period from January 1995 through May 1997, occurred more than three years before the filing of the instant complaint. In addition, the plaintiff has alleged no applicable tolling provisions. Thus, the section 1983 and 1985 claims are dismissed as barred by

the statute of limitations. See Neitzke, 490 U.S. at 325; 28 U.S.C. § 1915(e)(2)(B)(i).[2]

II. RICO Claims

The plaintiff also alleges that the defendants have violated his rights under RICO. RICO authorizes a private right of action for treble damages by a "person injured in his business or property by reason of a violation of section 1962 of [Title 18]." 18 U.S.C. § 1964(c). Section 1962 provides that

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in . . . the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . . (b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engage in, or the activities of which affect, interstate or foreign commerce. . . . (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1962. Any claim pursuant to 18 U.S.C. § 1964 must be brought within four

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[2] Furthermore, even if the plaintiff's allegations were within the statute of limitations, the Second Circuit has held that a plaintiff cannot recover in action brought pursuant to Section 1983 for false arrest and malicious prosecution if he was convicted of the offense for which he was arrested. See Cameron v. Fogarty, 806 F.2d 380, 386-87 (2d Cir. 1986), cert. denied, 481 U.S. 1016 (1987); Pouncy v. Ryan, 396 F. Supp. 126, 127 (D. Conn. 1975) (claims for false arrest or false imprisonment not actionable in light of valid judgment of conviction). The plaintiff alleges that he was convicted of all the offenses for which he was arrested.

years of the time the plaintiff discovers or should have discovered an injury to his business or property caused by the defendant. See Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156 (1987) (adopting four-year statute of limitations in Clayton Act for RICO civil enforcement actions); Bankers Trust Co. v. Rhoades, 859 F.2d 1096, 1102 (2d Cir. 1988), cert. denied sub nom.,Soifer v. Bankers Trust Co., 490 U.S. 1007 (1989).

In the present case, the plaintiff fails to allege any facts which would support an inference that the defendants were engaged in racketeering activity or involved in an enterprise which affects interstate or foreign commerce. Thus, construing the plaintiff's complaint liberally, there is no factual or legal basis for a RICO claim.[3] Because the plaintiff's complaint lacks an arguable basis in fact and law, it is dismissed as frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B)(i). See Neitzke, 490 U.S. at 325.

[3] In addition, even if the plaintiff had alleged facts to state a RICO claim, it is apparent that the plaintiff's claim would be barred by the applicable four-year statute of limitations.

Conclusion

For the reasons stated above, the complaint is DISMISSED. See 28 U.S.C. § 1915(e)(2)(B)(i), (ii) and (iii). The Motion for Appointment of Counsel [doc. # 3] is DENIED as moot. 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). The Clerk is directed to close this case.

SO ORDERED this 25th day of October 2005, at Hartford, Connecticut.

/s/DJS

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Dominic J. Squatrito
United States District Judge