

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ABDUL PEAY, :
Plaintiff, :
 :
V. : PRISONER
 : Case No. 3:03cv1887(RNC)
 :
CARL AJELLO, :
WILLIAM O'CONNOR and :
JOHANNA COLON, :
Defendants. :

RULING AND ORDER

Plaintiff, a Connecticut inmate, brings this action pursuant to 42 U.S.C. § 1983 against the public defender, prosecutor and probation officer who participated in the state criminal trial and sentencing that resulted in his incarceration. Motions to dismiss have been filed by the defendants. Dismissal is proper only if it appears beyond doubt that plaintiff can prove no facts consistent with his allegations that would entitle him to relief. For the reasons that follow, the motions to dismiss are granted.

Facts

In considering the motions to dismiss, the court accepts the following allegations of the amended complaint as true. Plaintiff was tried in state court on two counts of burglary. Assistant State's Attorney Carl Ajello was assigned to prosecute. Plaintiff was represented by Assistant Public Defender William O'Connor.

Before the trial commenced, O'Connor and Ajello, acting in concert with the presiding judge, sent a marshal to plaintiff's

cell to coerce him into accepting a plea agreement.

During the trial, Ajello provided O'Connor with "fraudulent finger prints" and "passed fraudulent photographs before the court." (Am. Compl. at 3.) O'Connor and Ajello also attempted to manipulate and suppress photographs favorable to the defense. A prosecution witness testified falsely, and O'Connor failed to contact persons plaintiff had identified as potential witnesses for the defense.

After the trial, Assistant Probation Officer Johanna Colon was assigned to prepare a presentence report. She included in the report a prior conviction from Ohio even though plaintiff told her the conviction "was the result of perjury," and misstated the date of the conviction, as a result of which plaintiff was sentenced as a "persistent offender." (Am. Compl. at 4.). In addition, she failed to include in the report plaintiff's entire work history.

Ajello's Motion

Ajello moves to dismiss all claims against him on the ground that he is protected by absolute prosecutorial immunity. Plaintiff responds that prosecutorial immunity should not apply because Ajello deliberately conspired to violate his rights.

Even assuming Ajello conspired to violate plaintiff's rights as alleged, he cannot be held liable because he committed the

alleged misconduct while performing his function as an advocate, which is protected by absolute immunity. See Imbler v. Pachtman, 424 U.S. 409, 427 (1976) (fairness of system could be weakened by subjecting prosecutors to damages liability under § 1983); Dory v. Ryan, 25 F.3d 81, 83 (2d Cir. 1994). This is true even if the alleged misconduct was undertaken pursuant to a conspiracy. See Pinaud v. County of Suffolk, 52 F.3d 1139, 1147-49 (2d Cir. 1995). Accordingly, Ajello's motion to dismiss must be granted.

O'Connor's Motion

O'Connor moves to dismiss on the ground that he is not subject to suit under § 1983 for acts committed in his capacity as a public defender because such acts do not constitute action under color of state law. He also relies on the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994), which provides that a § 1983 claim for damages based on an unconstitutional conviction does not accrue until the conviction has been invalidated. Plaintiff responds that O'Connor may be held liable under § 1983 because he conspired with Ajello.

Section 1983 does not provide a cause of action against a public defender who violates his client's rights while performing the traditional function of defense counsel because such conduct does not constitute action under color of state law, as O'Connor correctly contends. See Polk County v. Dodson, 454 U.S. 312, 317

(1981); Rodriguez v. Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997). However, a public defender who conspires with a state official to deprive a criminal defendant of his constitutional rights may be deemed to be acting under color of state law. See Tower v. Glover, 467 U.S. 914, 920-22 (1984).

The Court of Appeals has said that to properly plead a § 1983 conspiracy claim, a complaint must contain more than conclusory allegations. See Gyadu v. Hartford Ins. Co., 197 F.3d 590, 591 (2d Cir. 1999) (restating previous holding that vague, general or conclusory allegations of conspiracy are insufficient to withstand motion to dismiss); Dwares v. City of New York, 985 F.2d 94, 99-100 (2d Cir. 1993) (citing cases). Whether such a heightened pleading requirement may be applied here and, if so, whether it is satisfied, need not be decided because a judgment in favor of plaintiff would necessarily imply that his conviction is invalid and, accordingly, the claim must be dismissed without prejudice. See Heck, 512 U.S. at 486-88.

Colon's Motion

Colon contends that she is protected from suit by absolute judicial immunity. Plaintiff responds that Colon intentionally included false information in the presentence report to assist Ajello in characterizing him as a persistent offender.

Absolute judicial immunity under § 1983 has been given to some officials who, although not judges themselves, nevertheless "perform functions closely associated with the judicial process." Cleavinger v. Saxner, 474 U.S. 193, 200 (1985). This includes Connecticut probation officers who perform the function of preparing presentence reports. See Poe v. Massey, 3 F. Supp. 2d 176, 177 (D. Conn. 1998). Accordingly, Colon's motion to dismiss must be granted.

Conclusion

For the foregoing reasons, defendants' motions to dismiss are granted. The Clerk may close the case.

So ordered this 29th day of September 2005.

_____/s/_____
Robert N. Chatigny
United States District Judge