UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EFRAIN CRUZ, JR.	:	
	:	PRISONER
v.	:	CASE NO. 3:04CV1103(CFD)
	:	
SUPERIOR COURT JUDGES[1]	:	

RULING AND ORDER

Plaintiff, Efrain Cruz, Jr., ("Cruz"), is confined at the State of Connecticut Osborn Correctional Institution in Somers, Connecticut. He brings this civil rights action under 42 U.S.C. § 1983 pursuant to 28 U.S.C. § 1915. Cruz alleges that the various defendants have violated his rights concerning a prison conviction and a violation of probation and, more generally, the rights of minorities. For the reasons that follow, the amended complaint is dismissed.

I. Standard of Review

Cruz 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,

[1]In his original complaint, Cruz named the following as defendants: Superior Court Judge, Judge Ignotti, Prosecutor's Office New Britain, Public Defender Clancy, City of Hartford Police Department and William Sendio. On January 21, 2005, Cruz filed an amended complaint adding as defendants Judge Handy, Public Defender Offices, Attorney Mac Van Allen, Attorney Michael Wagner, Hartford Police Officer Spell and Hartford Police Officer Pulaski. In the amended complaint, Cruz refers repeatedly to Judge Ianotti. The court assumes that Judge Ianotti is the same individual as the defendant Ignotti included in the case caption and refers to this defendant as Judge Ianotti.

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, 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 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, 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).

In order to state a claim for relief under section 1983 of the Civil Rights Act, Cruz must satisfy a two-part test. First, he must allege facts demonstrating that the defendant acted 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).

II. Discussion

Cruz alleges generally that the Connecticut state court judges, public defenders and police departments act in collusion with prosecutors and are prejudiced against the poor and minorities. He brings two particular claims in this action.

Cruz describes his first claim as "violation of the due process and legal malpractice violation of constitutional right, privileges, misuse of legal process, coercion, deprival of the proper administration of justice." In support of this claim Cruz alleges that in January 1997, he

was incorrectly charged with assault in the second degree. On May 31, 1998, Cruz arrived at court late. Defendant Superior Court Judge Ianotti told Cruz to go home and wait for an arrest warrant to be served. Cruz alleges that Judge Ianotti then used his failure to appear to force him to accept an "otherwise involuntary" plea agreement. Alternatively, Cruz alleges that the judge, prosecutor and defense attorney worked in collusion to secure that plea.

Cruz pled guilty on May 19, 1999. He also alleges that he thought the agreed sentence was to be 3½ years, but was sentenced to a term of imprisonment of four years. When Cruz attempted to withdraw the plea, Judge Ianotti would not allow him to do so.

In July 2004, Cruz appeared before defendant Superior Court Judge Handy on a charge of violation of probation. He alleges that he asked Judge Handy to permit him to withdraw the 1999 guilty plea. Judge Handy allegedly informed Cruz that he could not withdraw the plea because "there is no longer any such law." Cruz admitted the violation of probation charge and was sentenced to imprisonment.

Cruz characterizes his second claim as ineffective assistance of counsel. He alleges that his public defender, Sandy Clancy, gave him inadequate counsel regarding the May 1999 guilty plea, that appointed counsel Van Allen failed to work in Cruz' best interest in a state habeas hearing and an unidentified defendant failed to file a motion to suppress items seized on June 21, 2003.

For relief, Cruz seeks $300,000,000 in compensatory damages, $300,000,000 in punitive damages, an order that all state court proceedings be recorded using audio and video equipment, and an order establishing policies to eliminate bias and prejudice in the state courts.

A. Claims Against Defendants Ianotti, Handy and other, unnamed Superior Court Judges

As mentioned, Defendant Ianotti is the state superior court judge who presided over Cruz' 1998-1999 criminal prosecution and guilty plea. Defendant Handy presided over Cruz' 2004 criminal action for violation of probation. Both are entitled to judicial immunity here.

"[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11 (1991). "The absolute immunity of a judge applies '"however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff."'" Young v. Selsky, 41 F.3d 47, 51 (2d Cir. 1994) (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985) (quoting Bradley v. Fisher, 13 Wall. 335, 347 (1872))). Judicial immunity is overcome in only two situations. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11 (citations omitted).

Cruz alleges that defendants Ianotti and Handy presided over state criminal proceedings. These actions were taken in the judges' judicial capacity and are within the jurisdiction of their court. Thus, defendants Ianotti and Handy are protected from suit for damages by absolute judicial immunity. The claims for damages against defendants Ianotti and Handy are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). In addition, any claims for damages against other unspecified superior court judges are dismissed for failure to allege any facts demonstrating a factual basis for those claims.

Cruz also seeks injunctive relief from the state judges. Judges are not absolutely immune from claims for prospective injunctive relief. See Pulliam v. Allen, 466 U.S. 522, 536-543 (1984). In October 1996, however, Congress amended section 1983 to bar injunctive relief "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983; Federal Courts Improvement Act of 1996, Pub.L. No. 104-317, § 309(c), 110 Stat. 3847, 3853; see also Montero v. Travis, 171 F.3d 757, 761 (2d Cir.1999) (dismissing claim for injunctive relief against judicial officer where plaintiff alleged neither violation of declaratory decree nor unavailability of declaratory relief). Cruz does not allege any facts suggesting that a declaratory decree was violated or that declaratory relief was unavailable. Thus, to the extent that Cruz' claims for injunctive relief are based upon his perception of bias in his state court cases, the claims must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). If Cruz' request for injunctive relief are not based on any of his cases, the claims are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) as lacking a factual basis.

B. Claims Against Defendant "Prosecutor Office New Britain"

Cruz names as a defendant the Prosecutor's Office in New Britain, Connecticut. He does not include as defendants any particular members of that office. The Offices of the State's Attorney for the thirteen judicial districts within the state are part of the Division of Criminal Justice, a state agency.

It is well-settled that a state agency is not a "person" within the meaning of section 1983. See Fisher v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973) (state prison department cannot be sued under section 1983 because it does not fit the definition of "person" under section 1983); Grabow

v. Southern State Correctional Facility, 726 F. Supp. 537, 538-38 (D.N.J. 1989) (same); Allah v. Commissioner of Dep't of Correctional Services, 448 F. Supp. 1123, 1125 (N.D.N.Y. 1978) (same). Thus, any claim asserted against the Prosecutor's Office, a state agency, pursuant to section 1983 lacks an arguable legal basis and must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

C. Claims Against Defendants Public Defender Clancy and Appointed Counsel Van Allen

Defendant Clancy was Cruz' public defender when he allegedly was forced to plead guilty in 1999. Defendant Van Allen was appointed to represent Cruz in a subsequent state habeas corpus proceeding. A defendant acts under color of state law when he exercises "some right or privilege created by the State . . . or by a person for whom the State is responsible," and is "a person who may fairly be said to be a state actor." See Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). Generally, a public employee acts under color of state law when he acts in his official capacity or exercises his responsibilities pursuant to state law. See West v. Atkins, 487 U.S. 42, 50 (1988). The Supreme Court has recognized an exception to the general rule for public defenders while they are performing the traditional function of counsel for criminal defendants. See Polk County v. Dodson, 454 U.S. 312, 317 (1981); Rodriguez v. Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997); Housand v. Heiman, 594 F.2d 923, 924-25 (2d Cir. 1979). "[W]hen representing an indigent defendant in a state criminal proceeding, the public defender does not act under color of state law for the purposes of section 1983 because he 'is not acting on behalf of the State; he is the State's adversary.'" West, 487 U.S. at 50 (quoting Polk County, 454 U.S. at 323 n.13). This exception also applies to a court-appointed attorney. See Rodriguez v.

Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997) (holding that court-appointed attorneys performing the traditional role of defense counsel do not act under color of state law and, thus, are not subject to suit under 42 U.S.C. § 1983.)

Cruz alleges that defendant Clancy failed to represent him properly regarding the 1999 guilty plea and the defendant Van Allen failed to represent him properly in a state habeas proceeding. Representing a client at trial and during plea negotiations is part of the traditional function of counsel to a criminal defendant. Because public defenders and court-appointed attorneys do not act under color of state law while defending a criminal action, the claims against defendants Clancy and Van Allen are not cognizable under section 1983, and are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

If a public defender conspires with a state official to deprive a criminal defendant of his constitutional rights, however, the public defender is deemed to have been acting under color of state law. See Tower v. Glover, 467 U.S. 914, 920-22 (1984). Even if the court were to construe Cruz' general statement of collusion among the court, prosecutor and defense attorney regarding his guilty plea as sufficient to state a claim of conspiracy, the claim must be dismissed.

The limitations period for filing a section 1983 action is three years. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (holding that, in Connecticut, the general three-year personal injury statute of limitations period set forth in Connecticut General Statutes § 52-577 is the appropriate limitations period for civil rights actions asserted under 42 U.S.C. § 1983). Cruz alleges that he entered the "coerced" guilty plea on May 19, 1999. Thus, he had until May 19, 2002, to file his claim against defendant Clancy.

The Second Circuit has held that a pro se prisoner complaint is deemed filed as of the date the prisoner gives the complaint to prison officials to be forwarded to the court. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993) (citing Houston v. Lack, 487 U.S. 266, 270 (1988)). Applying this "mailbox rule," the court concludes that the earliest date the complaint was given to prison officials for mailing was on July 1, 2004, the date Cruz signed the attached declaration. Thus, this claim was filed over two years too late. Any claims for conspiracy regarding the 1999 guilty plea are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) as time-barred.

D. Claims Against Defendants Wagner, Sendio, Spell, Pulaski, Hartford Police Department and Public Defender Offices

Cruz has alleged no facts regarding these defendants. Even if Cruz had included allegations against the defendant Hartford Police Department, all claims against that defendant must be dismissed.

A municipality is subject to suit pursuant to 42 U.S.C. § 1983. See Monell v. Department of Social Services, 436 U.S. 658, 690 (1978). A municipal police department, however, is not a municipality. Rather, it is a sub-unit or agency of the municipal government through which the municipality fulfills its policing function. See Cowras v. Hard Copy, Case No. 3:95cv99(AHN), slip op. at 25 (D. Conn. Sept. 29, 1997). Because a municipal police department is not an independent legal entity, it is not subject to suit under section 1983. See id. Other courts addressing this issue concur that a municipal police department is not a "person" within the meaning of section 1983 and, thus, not subject to suit. See, e.g., Dean v. Barber, 951 F. 2d 1210, 1215 (11th Cir. 1992) (affirming district court's dismissal of claims against county sheriff's department because, under state law, sheriff's department lacked capacity to be sued); Peterson v.

Easton Police Dep't Criminal Investigations Divs., No. Civ.A. 99-4153, 1999 WL 718551, at *1 (E.D. Pa. Aug. 26, 1999) (holding that a police department is not a person within the meaning of section 1983); Smith-Berch, Inc. v. Baltimore County, 68 F. Supp. 2d 602, 626-27 (D. Md. 1999) (citing cases for the proposition that municipal departments, including the police department, are not a person within the meaning of section 1983); Gaines v. University of Pennsylvania Police Dep't, No. 97-3381, 1997 WL 624281, at *3 (E.D. Pa. Oct. 7, 1997) (holding "as a matter of law, that police departments are purely instrumentalities of the municipality with no separate identity; thus, they are not 'persons' for purposes of § 1983 and not capable of being sued under § 1983."); PBA Local No. 38 v. Woodbridge Police Dep't, 832 F. Supp. 808, 825-26 (D.N.J. 1993) (citing cases to support statement that courts considering this issue have unanimously concluded that municipal police departments are not proper defendants in section 1983 actions). Accordingly, all claims against the Hartford Police Department are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). All claims against defendants Wagner, Sendio, Spell, Pulaski and Public Defender Offices are dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failing to state a claim upon which relief may be granted.

E. Motion to Vacate Guilty Plea

Cruz also has filed a motion asking the court to vacate his guilty plea. If the court were to grant this motion, it would necessarily call into question the validity of his conviction. This relief cannot be obtained in a civil rights action.

In Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), the Supreme Court held that the federal district court lacks subject matter jurisdiction to review state court judgments. Thus, under the

Rooker-Feldman doctrine, the federal district cannot entertain a collateral attack on a state court judgment "cloak[ed] . . . as a [section] 1983 action." Davidson v. Garry, 956 F. Supp. 265, 269 (E.D.N.Y. 1996), aff'd, 112 F.3d 503 (1997). Section 1983 may not be used as a substitute for the right of appeal in the state courts. See Tonti v. Petropoulous, 656 F.2d 212, 216 (6th Cir. 1981); McArthur v. Bell, 788 F. Supp. 706, 709 (E.D.N.Y. 1992); Noyce v. City of Iola, Kansas, No. 89-4092-R, 1990 WL 41399 (D. Kan. Mar. 29, 1990) (citing cases).

This court lacks subject matter jurisdiction to review the actions of the state court. See Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996) (holding that challenge under Rooker-Feldman doctrine goes to subject matter jurisdiction and may be raised sua sponte by the court). Although stated in conclusory terms, Cruz' allegation is a challenge to the denial of his state habeas petition. His recourse is an appeal in the state courts with a final appeal to the United States Supreme Court. Because the district court lacks subject matter jurisdiction to review the actions of the state superior court, this claim must be dismissed.

Further, a claim for injunctive relief challenging a conviction 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)).

The court is unable to construe the complaint as a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 for two reasons. First, Cruz has included claims for monetary relief that are not cognizable in a petition for writ of habeas corpus. Second, 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). Cruz does not allege

facts in his complaint suggesting that he has exhausted his state court remedies before commencing this action.

IV. Conclusion

The complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B). The motion to vacate his guilty plea [**doc. #3**] and motion for appointment of counsel [**doc. #9**] are **DENIED**. The Clerk is directed to enter judgment in favor of defendants and close this case.

If Cruz can allege facts correcting the deficiencies identified in his claims against defendant Wagner, Sendio, Spell, Pulaski and Public Defender Offices, he may file a motion to reopen, accompanied by an amended complaint. Any such motion and amended complaint shall be filed within **twenty (20)** days from the date of this order.

SO ORDERED this 21st day of March, 2005, at Hartford, Connecticut.

/s/ CFD
Christopher F. Droney
United States District Judge