

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEREMIAH F. YOUNG,)
)
Plaintiff)
)
v.) Civ. No. 01-112-P-C
)
BUD ELLIS, et al.,)
)
Defendants)

RECOMMENDED DECISION ON 42 U.S.C. § 1983 COMPLAINT

Plaintiff, Jeremiah Fitzpatrick Young, is an inmate at the Cumberland County Jail, Portland, Maine. He has filed a 42 U.S.C. § 1983 civil rights complaint. (Docket No. 1.) I have reviewed his complaint pursuant to the requirements of 28 U.S.C. § 1915 and I now recommend that the Court dismiss the complaint in its entirety for failure to state a claim. Failing that, I recommend that Defendant Budd Ellis be dismissed as a defendant because he is immune from liability with respect to the conduct that Young challenges.

Factual Allegations

I cull the factual allegations from Young's handwritten seven-page narrative and the statement of claim portion of his § 1983 complaint form. Young's difficulties apparently began on September 28, 1999, when he was arrested for violation of bail conditions. The next day he was taken to the courthouse to answer to charges. While there he was interviewed by Detective Donald Kreir of the Portland Police Department and Shelia Single of the Department of Human Services (DHS) about events that had occurred at his residence the day before. Young was told that his son, Jeremiah Young,

Jr., had bruises on him. His wife, Tammy Young had indicated that Young had caused the bruises. After being advised of his rights, Young gave a statement about the prior day's events. Young was not charged or arrested by Kreir at that time.

On that same day Young pleaded guilty to charges of domestic assault and "several other Class D and E charges." He received a split sentence calling for a period of incarceration in the county jail followed by two years of probation. He was released from confinement on December 10, 1999. While Young was in jail, DHS performed a DNA test to determine Jeremiah's paternity. The test results revealed that Young was not Jeremiah's father.

Young was indicted by the Cumberland County Grand Jury in January 2000 on the charge of assault of a minor, Class C, apparently in connection with the events of September 29, 1999, about which Detective Kreir had questioned him. Budd Ellis, one of the other defendants named in this complaint, was the assistant district attorney who handled the case in court. Young was represented by court appointed counsel. He was released from jail on a personal recognizance bail.

Following his release from jail Young entered into a relationship with Karen Ouellette, who was the mother of two young children. DHS apparently learned through a vindictive Tammy Young¹ that Young was residing in the residence with Ouellette and her two young children. An unnamed DHS representative visited Ouellette and threatened to remove the children from the home if she did not break off her relationship with Young. Young alleges that DHS ruined his relationship with Ouellette.

¹ Young instituted divorce proceedings against Tammy Young when he learned he was not Jeremiah's father and alleges that she then tried to make trouble for him by contacting authorities about his activities with Ouellette and making other spurious allegations.

Additionally Tammy Young complained to Detective Kreir that Young had been calling her and threatening her. As a result of Tammy Young's complaints Young was arrested for violation of his probation on February 18, 2000, and ultimately served 120 days in jail in connection with that offense.

While Young was in jail serving the 120-day sentence, the State filed a motion to revoke his personal recognizance bail on the assault on a minor charge. When he appeared before the court in March, Assistant District Attorney Ellis recommended that a \$100,000 surety bail be set. Young, a lifelong Maine resident, believed that bail was unreasonably high and apparently the judge agreed with him because bail was set at \$50,000 surety. Young was released on bail June 13, 2000, when his grandmother posted the requisite bond.

While Young was on bail he continued to see Ouellette and when DHS learned of this continued contact they initiated child protective proceedings to take custody of Ouellette's two minor children. When Ouellette went to court in connection with the jeopardy proceedings two unnamed women representatives from DHS showed her mother pictures of Jeremiah's bruises and accused Young of being an "animal." Young alleges that as a result of this conduct Ouellette's mother excluded him from family holiday celebrations.

Young's trial on the assault on a minor charge was scheduled to commence on February 14, 2001. Apparently after the jury was selected Ellis received information that Jeremiah had been taken into protective custody by DHS because the Department had discovered fresh bruises on the child on February 13, 2001, while the child had been in

the custody of Tammy Young. In light of this newly revealed information the charges against Young were dismissed.

Young complains as follows: “All my civil rights were violated [] my name was defamed. I was harassed. I was taken advantage of by the system. . . is it because I’m Black, or is it because I was married to a white woman, or is it because of my financial status or my criminal history, or all of the above? . . . my name was slandered and I was falsely accused.” Young asserts that the “system ruined [his] life.”²

Discussion

Congress has provided that it is appropriate to review Young’s § 1983 complaint at this stage to “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint” “is frivolous malicious, or fails to state a claim upon which relief can be granted” or “seeks monetary relief from a defendant who is immune from suit.” 18 U.S.C. § 1915A(b). See also id. § 1915(e)(2)(B).

In conducting this review I accept the allegations of Young’s complaint as true. Young’s factual allegations must be scrutinized to “identify the specific constitutional right [or rights] allegedly infringed.” Albright v. Oliver, 510 U.S. 266, 271 (1994) (noting that § 1983 is not an independent source of substantive rights, but an avenue to vindicate federal rights conferred elsewhere). The heart of Young’s complaint is that he was falsely accused and slandered. Young also alleges that his mistreatment at the hands of the “system” was perhaps due to his race and class, raising the specter of an equal protection claim.

² In his pleadings Young suggests that he is due to be released from the Cumberland County Jail on May 17, 2001. He does not explain why he is currently incarcerated as his pleadings suggest that he was released on \$50,000 surety bail in June 2000, and that the charges against him were dismissed in February 2001.

With respect to Young's allegation of slander, both the United States Supreme Court and the First Circuit have spoken as to the viability of defamation type claims in § 1983 complaints. In Siegert v. Gilley, 500 U.S. 226 (1991) the Court stated: "Defamation, by itself, is a tort actionable under the laws of most [s]tates, but not a constitutional deprivation." Id. at 233. The Court suggested that in order for a defendant's defamation to be an actionable part of a constitutional claim, the defamation must have been operative in the defendant's deprivation of one or more of a plaintiff's constitutionally protected liberty interests. Id. at 133-34.³

The First Circuit examined the tenability of a defamation claim in a § 1983 action in Aversa v. United States, 99 F.3d 1200 (1st Cir. 1996). Following Siegert, the court found that there was no viable constitutional claim based on the alleged defamation that resulted in a loss of employment, even though loss of employment is a property interest that the court recognized as "constitutionally protected." Id. at 1216. The court reasoned:

[A] plaintiff must allege that the loss of employment resulted from some further action by the defendant in addition to the defamation. Where it is the defendant who terminated the plaintiff, the further action is the termination. But where, as here a third party discharges or refused to hire the plaintiff solely as a result of the defendant's defamation, the plaintiff has not described a viable constitutional claim.

Id. at 1216.

In light of Siegert and Aversa Young's defamation related claims cannot be pursued in this § 1983 action. Young complains that the accusations levied by DHS caseworkers about him to his girlfriend, Ouellette, ruined his relationship with Ouellette. But Young has no clearly established constitutionally protected liberty interest in a non-

³ The Siegert Court concluded that the § 1983 plaintiff had not stated a claim for the infringement of any constitutional right, let alone one that was "clearly established" for purposes of overcoming the defense of qualified immunity. Id. at 231-34.

marital relationship with a particular person. See generally Bowers v. Hardwick, 478 U.S. 186 (1986). Likewise Young's claim concerning the DHS caseworkers' presentation to Ouellette's mother of pictures depicting a bruised Jeremiah and their description to her of Young as "an animal" fails. He has no constitutionally protected interest in holiday celebrations with family members of his "significant-other." And while Ouellette has a constitutionally protected interest as the mother of her two children in the parent-child relationship, this is not a right shared by Young, and so the alleged threats that DHS would take Ouellette's children if Young remained in the Ouellette household are not actionable by Young in a § 1983 complaint.

The allegations that are tied to Young's arrest, the setting of bail, and his prosecution do implicate a constitutionally protected interest: liberty. However, as in Aversa, there is a fatal disconnect between the actors making the accusations and the conduct resulting in the deprivation of Young's liberty.

It seems that the principal defamer in Young's version of the facts is Tammy Young. Tammy Young is not a state actor subject to suit under § 1983 and Young has not named her as a defendant. Detective Kreir arrested Young based on Tammy Young's accusation to Kreir that Young was threatening her and Young's probation was revoked on the basis of Tammy Young's accusations. Nothing in these allegations suggests that Kreir generated defamatory remarks in order to work this arrest and bail revocation.

The allegations concerning DHS false accusation and slander suffer from a number of defects. The Department, as a state agency, cannot be sued under § 1983 by dint of the State's sovereign immunity guaranteed by the Eleventh Amendment to the Constitution. See O'Neill v. Baker, 210 F3d 41, 47 (1st Cir. 2000). While DHS

caseworkers could be sued in their individual capacities, see id., the only named DHS actor is Sheila Single who was present on September 28, 1999, when Young was questioned about the domestic disturbance the day before. And as already noted, Young does not connect the statements made by any DHS actor to the deprivation of a liberty interest of his own.

With respect to District Attorney Ellis, who recommended the high bail and pursued prosecution of Young, there are no allegations that he made defamatory statements in tandem with these actions. And even if Young stated a claim against Ellis, he is absolutely immune from suit for his prosecutorial decisions. Imbler v. Pachtman, 424 U.S. 409 (1976); Reid v. N.H., 56 F.3d 332, 336 (1st Cir. 1995). For this reason, even if Young's actions were allowed to proceed as to any of the other defendants, they must be dismissed as to Ellis.

Young's protests as to Officer Kreir's arrest of him for assault of the minor could suggest a claim for malicious prosecution. See generally Albright v. Oliver, 510 U.S. 266 (1994) (split Supreme Court decision analyzing proper constitutional analysis for a malicious prosecution claim); Nieves v. McSweeney, 241 F.3d 46 (1st Cir. 2001) (analyzing proper constitutional characterization of claim for malicious prosecution). However, Young states only that Kreir questioned him in the court house in September 1999, about the events of the day before, brought-up the bruises on Jeremiah's body, read him his rights, and took a statement from him. Kreir told Young, "There was nothing to worry about and he would get back to [Young]." Later Kreir responded to Tammy Young's allegation that Young was harassing her and arrested Young on February 18, 2000, for a violation of probation. Though this resulted in a 120 days of liberty

deprivation in the county jail, Young alleges no facts that would support a determination that Kreir acted improperly in proceeding on Tammy Young's allegations in "seizing" him. Nieves, 241 F.3d at 54-57 (discussing Fourth Amendment "seizure" in relation to malicious prosecution claims). Furthermore, Maine does recognize the tort of malicious prosecution, Leach v. Betters, 599 A.2d 424 (Me. 1991), and in the face of this "adequate state law remedy" Young does not have a cognizable § 1983 claim based on a Fourteenth Amendment due process theory.

Finally, other than describing his own discomfort at the way the jury pool looked at him as the only Black person in the courtroom, Young provides no factual details concerning his allegations of racial animus or other improper motive. His allegations that the system took advantage of him perhaps because of his interracial relationship with a white woman, his class, or criminal background, are just the kind of unsupported conclusory assertions that the First Circuit has concluded do not carry the § 1983 plaintiff's burden when alleging a violation of equal protection rights. See Judge v. Lowell, 160 F.3d 67, 72 (1st Cir. 1998) (dismissing § 1983 equal protection claim, providing that "the element of illegal motive must be pleaded by alleging specific non-conclusory facts from which such a motive may reasonably be inferred, not merely by generalized asseveration alone."); see also United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (conclusory arguments need not be considered).

Conclusion

For the forgoing reasons I **RECOMMEND** that Young's complaint be **DISMISSED** because its **FAILS TO STATE A CLAIM** for which § 1983 relief can be granted. Barring dismissal in its entirety, I **RECOMMEND** that the complaint be

DISMISSED as to Defendant **BUDD ELLIS** because he is immune from suits challenging his prosecutorial actions.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

May 21, 2001.

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court

District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 01-CV-112

YOUNG v. DISTRICT ATTORNEYS, et al

Filed: 04/20/01

Assigned to: JUDGE GENE CARTER

Jury demand: Plaintiff

Demand: \$0,000

Nature of Suit: 550

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

JEREMIAH FITZPATRICK YOUNG

JEREMIAH FITZPATRICK YOUNG

plaintiff

[COR LD NTC pse] [PRO SE]

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WINDHAM, ME 04062

v.

CUMBERLAND COUNTY DISTRICT

ATTORNEYS OFFICE

defendant

BUDD ELLIS, District Attorney
defendant

DONALD KREIR, PORTLAND POLICE
DEPARTMENT DETECTIVE
defendant

MAINE DEPARTMENT OF HUMAN
SERVICES
defendant