

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1076

Roscoe Chambers

Plaintiff - Appellant

v.

Nicholas Sarcone

Defendant - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:17-cv-00432-SMR)

JUDGMENT

Before SHEPHERD, ERICKSON and GRASZ, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full \$505 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed.

See Eighth Circuit Rule 47A(a).

May 14, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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ORDER

The petition for rehearing by the panel is denied.

July 11, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ROSCOE CHAMBERS,)
Plaintiff,) No. 4:17-cv-00432-SMR-SBJ
v.)
NICHOLAS A. SARCONE,)
Defendant.) INITIAL REVIEW ORDER
)

Plaintiff Roscoe Chambers brings this pro se pleading, labeling it as a civil rights complaint pursuant to 42 U.S.C. § 1983. Jurisdiction is proper under 28 U.S.C. § 1333. Chambers seeks monetary damages only.

The Prison Litigation Reform Act requires federal courts to review all prisoner complaints filed against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). On review, the Court must identify the cognizable claims or dismiss the complaint, or any part of it, that it determines (a) is frivolous or malicious, (b) fails to state a claim upon which relief may be granted, or (c) seeks monetary relief from a defendant who is immune from such relief. *Id.* at § 1915A(b).

A claim is “frivolous” if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The plausibility standard requires a plaintiff to show at the pleading stage that success on the merits is more than a ‘sheer possibility.’” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

(Medina)

my Constitutional rights aint immune
are they if whether a contracted attorney is
obligated to get immunity

A pro se complaint in a proceeding without prepayment of fees must be construed liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The Court must weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (determination of what is “clearly baseless” is left to discretion of court ruling on *in forma pauperis* petition). Although Federal Rule of Civil Procedure 8(a)(2) does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citation omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678-79 (citations omitted).

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted). A complaint states a plausible claim for relief when its “factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

Medical Treatment

Chambers first alleges he is being denied appropriate medical attention. He does not identify any defendant responsible for the lack of treatment. Chambers is currently incarcerated at USP Victorville in Adelanto, California. If Chambers seeks to address the medical care he is receiving in California, he must file an appropriate action in the district where he is confined, and identify

specific defendant(s) who are responsible for the alleged constitutional violation. *See* 28 U.S.C. § 1331 (venue in a civil action is appropriate in a judicial district where any defendant resides, in a district where a substantial part of the events giving rise to the claim occurred, or any judicial district in which any defendant is subject to the court's personal jurisdiction). Because this Court does not have venue over the allegations of inadequate medical care, **the claim is dismissed without prejudice** to Chambers submitting his complaint against in the appropriate federal district court.

Representation in § 2255 Proceeding

Chambers also alleges the attorney on his collateral criminal challenge was ineffective to the extent that Chambers now must serve an illegal sentence. He asserts counsel refused to present any of his issues, refused to say how the sentence was calculated, refused to argue that a previous conviction should not qualify, and allegedly instructed prison officials to prevent Chambers from calling counsel. Complaint 5, ECF No. 1. Chambers seeks money damages from his former counsel based on these claims.

The Court takes judicial notice that Nicholas Sarcone represented Chambers in *Chambers v. United States*, 4:15-cv-00468-SMR (S. D. Iowa) (Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255). On initial review in that case, the Court dismissed all but one ground for relief, a claim based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). Order, ECF No. 9. The Court appointed Nicholas Sarcone to represent Chambers on the remaining *Johnson* claim. Order, ECF No. 12. Ultimately the Court dismissed the final *Johnson* claim as well. Order, ECF No. 33. The Court of Appeals denied the request for certificate of appealability. Judgment, ECF No. 47.

“[A] public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981); *see also Townsend v. Jacks*, 417 F. App’x 577, 578 (8th Cir. 2011) (per curiam) (“public defender was not acting under color of state law when representing” defendant); *Sullens v. Carroll*, 446 F.2d 1392, 1393 (5th Cir. 1971) (per curiam) (counsel for defendants in federal criminal cases are entitled to immunity in civil suit the same as federal officials); *Jones v. Warlick*, 364 F.2d 828, 828 (4th Cir. 1966) (per curiam) (defense attorney in federal prosecution immune from civil suit for acts alleged).

Sarcone is entitled to immunity for his representation during the § 2255 action, and Chambers’s claim for damages must be dismissed.

Summary and Rulings

For all of the above-stated reasons, the claim based on lack of medical care is dismissed without prejudice to Chambers filing his claim in the appropriate court. His claim against Defendant Sarcone, however, “lacks an arguable basis either in law or in fact,” *Neitzke*, 490 U.S. at 325, and must be dismissed.

Permission to proceed without prepayment of fees (ECF No. 2) is **granted**. Chambers states the prison staff refuse to certify his accounts and assets. Motion 1, ECF No. 2-1. Therefore, based on the information Chambers did submit, the Court assesses no initial partial filing fee. The remainder of the \$350.00 filing fee, however, shall be paid to the Clerk of Court from Chambers’s account in accordance with 28 U.S.C. § 1915(b) as funds become available. A notice of this obligation shall be sent to Chambers and the appropriate Bureau of Prisons official.

The complaint is dismissed. *See* 28 U.S.C. § 1915A(b) (court shall dismiss complaint on initial review if complaint is frivolous, malicious, fails to state claim or seeks monetary relief from defendant who is immune). This dismissal, and any appeal of this order if affirmed as frivolous, will count against Chambers for purposes of the three-dismissal rule in 28 U.S.C. § 1915(g) (prisoner shall not bring civil action in forma pauperis if prisoner has, on three or more prior occasions, brought action that was dismissed as frivolous, malicious, or failed to state a claim unless prisoner is in imminent danger of serious physical injury).

IT IS SO ORDERED.

Dated this 20th day of December, 2017.

Stephanie M. Rose
STEPHANIE M. ROSE
UNITED STATES DISTRICT JUDGE