UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1066

Terry G. Watson

Plaintiff - Appellant

v.

Nathan B. Stewart, Judge, Individual and Official Capacity; Forrest Wegge, Prosectutor, Individual and Official Capacity; Catherne Crowley, Supervising Prosecutor, Individual and Official Capacity; Travis D. Partney, Prosecutor, Individual and Official Capacity; Michael Stempf, Individual and Official Capacity; Dave Marshak, Jefferson County Sheriff, Individual and Official Capacity; Carden M. Choney, Jefferson County Deputy, Individual and Official Capacity; International Business Machines, Individual and Official Capacity; Secretary of Department of Veterans Affairs, Individual and Official Capacity

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Missouri - Hannibal
(2:18-cv-00090-NCC)

JUDGMENT

Before COLLOTON, GRUENDER, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

July 15, 2019

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

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:18CV90 NCC
	)	
NATHAN B. STEWART, et al.,	)	
	)	
Defendants.	)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the motion of Terry G. Watson, an inmate at the Northeast Correctional Center, for leave to commence this civil action without prepayment of the required filing fee. Having reviewed the motion and the financial information submitted in support, the Court has determined to grant the motion, and assess an initial partial filing fee of $81.91. *See* 28 U.S.C. § 1915(b)(1). In addition, for the reasons discussed below, the Court will dismiss the complaint, without prejudice.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds $10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted a certified inmate account statement[1] showing an average monthly deposit of $409.53, and an average monthly balance of $163.33. The Court will therefore assess an initial partial filing fee of $81.91, which is twenty percent of plaintiff's average monthly deposit.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts, but need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678 (citing *Twombly,* 550 U.S. at 555); *see also Brown v. Green Tree Servicing LLC*, 820 F.3d 371, 372-73 (8th Cir. 2016) (stating that

[1] Plaintiff also filed a motion asking the Court to accept his inmate account statement in support of his motion for leave to proceed *in forma pauperis*. (Docket No. 4). The motion will be denied as moot, as plaintiff does not need to move the Court to accept the statement in order for it to be considered.

court must accept factual allegations in complaint as true, but "does not accept as true any legal conclusion couched as a factual allegation").

Pro se complaints are to be liberally construed, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), but they still must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to "assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint." *Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004).

Background

Review of Missouri Case.net shows that, on April 14, 2011, prosecuting attorney Travis Partney, who is named as a defendant in this action, filed an information against plaintiff in the Jefferson County Circuit Court, charging him with committing crimes against his daughter, who will be identified herein as "K.W." *State v. Terry Gene Watson,* No. 10JE-CR03225-01 (23rd Jud. Cir. 2012). A jury trial was conducted from February 28, 2012 through February 29, 2012. On February 29, 2012, the jury convicted plaintiff of first-degree statutory rape, second-degree statutory rape, two counts of first-degree statutory sodomy, and incest, all of which stemmed from his actions against K.W. On April 27, 2012, the Honorable Nathan Baird Stewart, who is named as a defendant in this action, sentenced plaintiff to serve a total of nineteen years in prison. Plaintiff's convictions and sentences were affirmed on direct appeal, and plaintiff sought and was denied state collateral relief.

On December 16, 2015, plaintiff filed a petition for writ of habeas corpus in this Court pursuant to 28 U.S.C. § 2254, challenging that state court judgment. *See Watson v. Bowersox*, No. 4:15-cv-1864-ACL (E.D. Mo. 2015). In the complaint that plaintiff filed in the case at bar, he describes the pending § 2254 action as "pending issuance of the writ" and "unopposed by the

State." However, review of Court records shows that, on August 1, 2016, respondent Michael Bowersox filed a response to the Court's order to show cause, arguing that the Court should deny plaintiff's petition for writ of habeas corpus because all of his grounds for relief are meritless. As of the date of this Memorandum and Order, plaintiff's petition remains pending before the Honorable Abbie Crites-Leoni, United States Magistrate Judge.

The Complaint

Plaintiff brings this civil rights action against Judge Stewart, prosecuting attorneys Forrest Wegge, Catherne Crowley, and Travis D. Partney, law enforcement officers Dave Marshak and Carden M. Choney, International Business Machines ("IBM"), Michael Stempf (an IBM software engineer), and the Secretary of the Department of Veterans Affairs.

The complaint spans 50 pages. It contains a great deal of legal argument, and extraneous information about various topics. However, it is clear that all of plaintiff's claims arise from events that occurred when he was being investigated, prosecuted, and sentenced for his crimes against K.W. Throughout the complaint, plaintiff repeatedly alleges that he is innocent of the crimes of which he was convicted, and is being illegally incarcerated. He states he brings claims of destruction and/or suppression of evidence, fabrication of evidence, failure to investigate, malicious prosecution, conspiracy pursuant to 42 U.S.C. §§ 1981, 1983 and 1985, "custom and habit of Missouri government and Jefferson County," false arrest, defamation, violations of international covenants and treaties prohibiting slavery and torture, and *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971).[2] He also states he intends to proceed against the Secretary of the Department of Veterans Affairs under the Federal Tort Claims Act ("FTCA").

[2] Under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971), an individual may sue individual federal agents for damages for unconstitutional conduct in violation of the Fourth, Fifth and Eighth Amendments.

Condensed and summarized, plaintiff's allegations are as follows. On or about March 25, 2010, plaintiff and K.W. argued, and she said she was "ending her at will tenancy at his home." About two days later, K.W., Stempf, and Choney came to plaintiff's house and committed "armed burglary." In so doing, they removed exculpatory evidence. K.W., while seated next to Choney, swore out an affidavit in which she falsely stated that plaintiff had sexually assaulted her for more than five years, beginning when she was 14. During a telephone call, plaintiff was threatened to turn himself in to the police. K.W., Choney, and "parties principle to the prosecution" conspired to expand K.W.'s affidavit to falsely allege that plaintiff's wife had also sexually abused K.W. Crowley and Partney coerced a witness to testify against plaintiff. Choney and others wrote a new probable cause statement based upon this false affidavit and shredded the original, depriving plaintiff of the opportunity to use it as exculpatory evidence.

On or about March 17, 2010, "parties principle to the prosecution" and Stempf "removed or destroyed all exculpatory evidence of the parties principle to the prosecution electronic internet information to deprive plaintiff of its use in court to defend himself." Also on or about March 17, 2010, managers at the Veterans Administration Center, where K.W. worked, destroyed exculpatory evidence when they removed K.W.'s employee email account. Choney failed to secure the alleged crime scene in March 2010, and in August of 2010, Choney wrote a "known false probable cause statement without conducting any type of investigation into the allegations." Plaintiff informed Choney about "the plethora of exculpatory evidence," but Choney said he was not interested and refused to interview anyone who had exculpatory evidence, even though he knew the witness statements were false.

A warrant was issued for plaintiff and his wife based upon the false affidavit and false probable cause statement. In September of 2010, plaintiff and his wife were forced to turn

themselves in to police. Plaintiff was falsely charged with committing rape, sodomy, and incest. Wegge allowed Crowley and Partney to create unconstitutional conditions, and Partney aided and abetted others to commit crimes against plaintiff in order to convict him. Judge Stewart and Crowley were both intoxicated during plaintiff's trial and other court proceedings. The defendants failed to adequately investigate plaintiff's case, they had no probable cause to prosecute him, and they pursued plaintiff for personal and political gain and because he and his wife were not Christians. The jury returned its verdict based upon false evidence and subornation of perjury by the prosecution and all three states' witnesses. Judge Stewart was intoxicated during plaintiff's April 27, 2012 sentencing, and "the drunk judge ordered the counts to run consecutively."

Plaintiff filed a request with the Department of Veterans Affairs, asking that his claims file be sent to him, the Social Security Administration, and to this United States District Court. He alleges that the claims file contains evidence of his actual innocence, but it was withheld. He alleges he secured production of the file by filing a petition in the United States Court of Appeals for Veterans Claims, and he alleges that, on April 5, 2017, Judge Crites-Leoni granted his motion to present recently discovered evidence in support of his actual innocence claim.[3] The Department of Veterans Affairs also wrongfully denied or delayed plaintiff's veterans' benefits

[3] Review of records of the United States Court of Appeals for Veterans Claims shows that, in December of 2016, plaintiff filed a petition asking the Court to order the Department of Veterans Affairs to provide the claims file to him, this United States District Court, and the Social Security Administration. The Department of Veterans Affairs responded that it had provided the claims file as requested, albeit after some delay, and argued that plaintiff's petition should therefore be dismissed as moot. On February 17, 2017, the Court determined that plaintiff had obtained his desired relief, and dismissed his petition as moot. *Watson v. Shulkin, M.D.*, No. 16-4219 (Vet. App. 2017). On April 5, 2017, Judge Crites-Leoni entered an order granting plaintiff's motion for leave to file recently discovered evidence, stating that the motion was granted in that plaintiff was permitted leave to file evidence in support of his petition.

claim. Plaintiff also alleges that his imprisonment violates his rights because it amounts to enslavement and torture.

Plaintiff seeks various forms of relief. He asks that a case he identifies as "10JE-03224-01"[4] be discharged with prejudice and that records be sealed or destroyed; he wants a full-page ad containing a letter of apology to him to be placed in the St. Louis Post Dispatch; he wants Crowley and Partney to be disbarred; and he seeks a total of $125 million in damages.

Plaintiff's Motion for Injunctive Relief

After filing the complaint, plaintiff filed a motion seeking injunctive relief against Stempf. In support, plaintiff states he has been "proved actually innocent of the State's conviction in Watson v. Godert, 4:15-cv-1854-ACL, awaiting the issuance of the writ," and he claims that the State admitted, and the Court accepted, that he is actually innocent. However, these statements are untrue. As discussed above, the State has opposed plaintiff's § 2254 petition for writ of habeas corpus, and the Court has yet to rule on plaintiff's petition. Also in the motion, plaintiff claims that Stempf has the "custom and habit of hiding assets to deceive courts," and was the "lead vigilante of the parties principle to the prosecution that committed armed burglary" of his home, removing exculpatory evidence. He echoes many allegations from his complaint, including that Stempf destroyed exculpatory evidence. Plaintiff repeatedly alleges he was wrongfully prosecuted and convicted due to the defendants' wrongdoing, and he claims the defendants therefore owe him millions of dollars in damages. He asks this Court to order

[4] This is an apparent reference to *State v. Gina Watson*, No. 10JE-CR03224-01 (23rd Jud. Cir. 2012). There, Mrs. Watson was charged with two felony counts of endangering the welfare of a child. She pleaded guilty on June 19, 2012. On August 22, 2012, Judge Stewart sentenced her to two five-year prison terms, the execution of which were suspended. He also sentenced her to two concurrent five-year terms of supervised probation, which she successfully completed on August 22, 2017.

Stempf to disclose a list of all of his assets, including account numbers, to ensure "no skullduggery is conducted upon" him, and to enjoin Stempf from transferring assets of any kind.

Discussion

Plaintiff states he brings this action pursuant to 42 U.S.C. §§ 1981, 1982, 1983, 1985, and 1986, *Bivens*, and the FTCA. To the extent plaintiff's claims can be understood to arise under any of the foregoing, they are time-barred.

Claims arising under §§ 1982, 1983, 1985 and *Bivens* are subject to the forum state's statute of limitations for personal injury claims. *See Harris v. Norfolk & W. Ry. Co.*, 616 F.2d 377, 378 (8th Cir. 1980) (§ 1982); *SternJohn v. Kreisler*, 238 F. Supp. 2d 1104, 1112 (D. Minn. 2003) (§ 1982); *Wallace v. Kato,* 549 U.S. 384, 387 (2007) (§ 1983), *Sulik v. Taney County, Mo.*, 393 F.3d 765, 766-67 (8th Cir. 2005) (§ 1983); *Roach v. Owen*, 689 F.2d 146, 166-47 (8th Cir. 1982) (§ 1985); *Sanchez v. United States*, 49 F.3d 1329, 1330 (8th Cir. 1995) (*Bivens* actions are governed by the same statute of limitations as § 1983 actions). Therefore, in this case, plaintiff's §§ 1982, 1983, 1985 and *Bivens* claims are subject to Missouri's five-year limitations period found in Mo. Rev. Stat. § 516.120. Plaintiff's claims brought pursuant to § 1981 are subject either to that five-year statute of limitations, or to the four-year limitations period for federal claims set forth at 28 U.S.C. § 1658. *Jones v. R.R. Donnelley & Sons Co*, 541 U.S. 369, 382 (2004) (Claims arising under the 1991 amendments to § 1981 are governed by the statute of limitations provided by 28 U.S.C. § 1658, while claims arising under earlier versions of the statute are governed by the forum state's statute of limitations for personal injury claims). Claims brought under 42 U.S.C. § 1986 are subject to a one-year statute of limitations, 42 U.S.C. § 1986, and claims brought under the FTCA are subject to a two-year statute of limitations. *Sell v. U.S. Dept. of Justice,* 585 F.3d 407 (8th Cir. 2009).

As described above, all of plaintiff's claims arise from events that occurred, at the latest, in 2012. Plaintiff signed the instant complaint on October 10, 2018, and it was filed in this Court on October 12, 2018. Plaintiff presents no reason why he did not know of any of his alleged injuries at the time any defendant's allegedly unconstitutional conduct occurred. Instead, he acknowledges the untimeliness of his claims, and he asks this Court to apply the doctrine of equitable tolling because he is illegally incarcerated. However, plaintiff's statement that he is illegally incarcerated provides no basis to equitably toll the statute of limitations. The statement lacks factual support, and even if it were true, it would not explain why plaintiff was unable to file his complaint sooner. Therefore, regardless of whether plaintiff's claims are construed as brought pursuant to *Bivens* or the FTCA, or 42 U.S.C. §§ 1981, 1982, 1983, 1985, or 1986, it is apparent that the applicable statute of limitations has run. The Court will therefore dismiss the complaint, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2). *See Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992) ("Although the statute of limitations is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915[ ] when it is apparent the statute of limitations has run.").

Even if plaintiff's complaint had been timely filed, it would be subject to dismissal. Claims under 42 U.S.C. §§ 1981 and 1982 are limited to instances of racial discrimination. Plaintiff, a Caucasian, makes reference to his "ethnicity" and he states the defendants pursued him because he was not Christian, but he sets forth no non-conclusory allegations that any defendant's allegedly wrongful actions were actually taken because of his race. Similarly, a conspiracy claim pursuant to 42 U.S.C. § 1985 requires a plaintiff to show, *inter alia*, that the conspiracy was motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus," *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 268-69

(1983), and plaintiff's complaint includes no non-conclusory allegations of such animus. Because plaintiff has no valid claim under § 1985, he has no valid claim under § 1986. *See* 42 U.S.C. § 1986, *Coleman v. Garber*, 800 F.2d 188, 191 (8th Cir. 1986).

Plaintiff states he intends to proceed against the Secretary of the Department of Veterans Affairs pursuant to the FTCA. Plaintiff does not clearly explain why he believes his claims against the Secretary arise under the FTCA, but it appears he seeks to redress an allegedly wrongful veteran benefits determination, or delay of his receipt of a claims file. Nevertheless, plaintiff alleges no facts that can be liberally construed as demonstrating that state law would impose liability on a private individual in similar circumstances, and he therefore fails to state a valid FTCA claim. *See First Nat. Bank in Brookings v. United States*, 829 F.2d 697, 700 (8th Cir. 1987). Plaintiff also states he intends to bring a *Bivens* claim against the Secretary. However, plaintiff does not state a viable *Bivens* claim against the Secretary because he does not allege that the Secretary was personally involved in any of the alleged misconduct. *See Iqbal,* 556 U.S. at 675-77 ("Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."). Additionally, a *Bivens* action cannot be brought directly against a federal agency. *F.D.I.C. v. Meyer,* 510 U.S. 471, 484-85 (1994). Finally, this Court lacks jurisdiction to redress veteran benefits determinations, and the Eighth Circuit Court of Appeals has specifically refused to recognize a *Bivens* action in cases alleging a wrongful delay or denial of veterans' benefits. *See Mehrkens v. Blank,* 556 F.3d 865, 870 (8th Cir. 2009) (recognizing that Congress enacted the Veterans' Judicial Review Act to establish a framework for adjudication of veterans' benefits claims, and that body is better suited to

augment that scheme with new remedies); *see also Radford v. United States*, 178 F. Supp. 3d 784, 790-91 (E.D. Mo. 2016).

The Court turns to plaintiff's § 1983 claims against Judge Stewart, and prosecuting attorneys Wegge, Crowley, and Partney. Judge Stewart enjoys absolute immunity from plaintiff's suit for money damages, and plaintiff makes no non-conclusory allegations that Judge Stewart acted outside his judicial capacity or in the clear absence of jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11–12 (1991); *Liles v. Reagan*, 804 F.2d 493, 495 (8th Cir. 1986). Plaintiff's allegations against prosecuting attorneys Wegge, Crowley, and Partney are wholly based upon their alleged wrongdoing while initiating and pursuing the State of Missouri's criminal prosecution of him. Prosecutors are immune from such claims. *See Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976) (holding that prosecutors are absolutely immune from civil rights claims based on actions taken while initiating and pursuing a criminal prosecution); *see also Brodnicki v. City of Omaha*, 75 F.3d 1261, 1266 (8th Cir. 1996) ("Absolute immunity covers prosecutorial functions such as the initiation and pursuit of a criminal prosecution, the presentation of the state's case at trial, and other conduct that is intimately associated with the judicial process"); *Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016) (same). Plaintiff's allegations that the prosecutors were out to get him or acted in bad faith would not save his claims. *See Imbler*, 424 U.S. at 427-28 (there is no fraud exception to prosecutorial immunity, and it is better to leave wrongs committed by dishonest officers unredressed than to subject the honest to the constant dread of retaliation). Additionally, under the principles dictated in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), a claim of vindictive prosecution may lay only if the plaintiff's conviction has been deemed invalid, which plaintiff has not demonstrated.

Plaintiff also fails to state any valid claims for relief against Marshak, Choney, Stempf, and IBM. Plaintiff repeatedly alleges that Marshak, Choney and Stempf committed "armed burglary" at his home in March of 2010. This statement is simply a legal conclusion that is not entitled to the presumption of truth. *See Iqbal*, 556 U.S. at 678 (to state a claim for relief, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements"). Plaintiff's remaining claims against Marshak, Choney, Stempf and IBM are *Heck*-barred. A prisoner may not recover damages in a § 1983 suit where the judgment would necessarily imply the invalidity of his conviction, continued imprisonment, or sentence unless the conviction or sentence is reversed, expunged or called into question by issuance of a writ of habeas corpus. *Heck*, 512 U.S. at 489-90 (1994) (barring claims alleging state officials conducted an arbitrary investigation and knowingly destroyed exculpatory evidence); *Schafer v. Moore*, 46 F.3d 43, 45 (8th Cir. 1995); *see also Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (applying *Heck* in a § 1983 suit seeking declaratory relief).

In this case, plaintiff has been convicted and sentenced in state court, his convictions and sentences have been affirmed on direct appeal, and he has been denied state collateral relief. While he repeatedly states to this Court that he has proven his actual innocence in his pending federal habeas proceedings and is merely awaiting issuance of the writ, those statements lack factual support. Plaintiff's § 1983 claims are based upon his allegations that the allegations against him were false, he was arrested without probable cause and wrongfully imprisoned, Marshak and Choney falsified reports, provided false probable cause statements and pursued charges they knew were false, Marshak, Choney, Stempf and/or IBM knowingly destroyed exculpatory evidence, plaintiff's incarceration is illegal because it amounts to slavery and torture,

and plaintiff is innocent of the crimes of which he was convicted. Judgment in plaintiff's favor on any of these claims would necessarily imply the invalidity of his convictions, continued imprisonment, or sentences. They are therefore barred by *Heck.* To the extent plaintiff can be understood to allege that any defendant committed wrongful search or seizure, such claims are time-barred as explained above. As an additional matter, while plaintiff offers his conclusory statement that Stempf and IBM acted under color of state law, he alleges no facts permitting that conclusion. *See West v. Atkins*, 487 U.S. 42, 48 (1988) (to state a claim under 42 U.S.C. § 1983, a plaintiff must establish, *inter alia*, that the alleged constitutional violation was committed by a person acting under color of state law).

Plaintiff also states he intends to bring a conspiracy claim under § 1983. To prevail on a § 1983 conspiracy claim, a plaintiff must allege, *inter alia*, the deprivation of a constitutional right or privilege. *Askew v. Millerd*, 191 F.3d 953, 958 (8th Cir. 1999) (internal citation omitted). As noted above, plaintiff herein has failed to state a viable claim that his constitutional rights were violated, and he therefore cannot maintain a § 1983 conspiracy claim. Even if plaintiff had successfully alleged a constitutional violation, his § 1983 conspiracy claim would fail. Judge Stewart and the prosecutors plaintiff attempts to sue are immune from such a claim because their alleged participation consisted of otherwise immune acts, and plaintiff's allegations of conspiracy against the other defendants are wholly conclusory and speculative. Allegations of conspiracy must be pled with sufficient specificity and factual support to suggest a "meeting of the minds." *Manis v. Sterling*, 862 F.2d 679, 681 (8th Cir. 1988); *see also Iqbal*, 556 U.S. at 678.

Plaintiff can also be understood to attempt to assert a claim under *Monell v. Dept. of Social Services of City of New York,* 436 U.S. 658, 690-91 (1978), which provides that § 1983 liability may attach to a municipality if a constitutional violation resulted from an official

municipal policy. As noted above, plaintiff has failed to state a viable claim that his constitutional rights were violated. Therefore, there can be no *Monell* liability. *See Malone v. Hinman*, 847 F.3d 949, 955 (8th Cir. 2017), *McCoy v. City of Monticello*, 411 F.3d 920, 922 (8th Cir. 2005). Also, as with plaintiff's other claims, plaintiff's wholly conclusory and speculative allegations are insufficient to state a viable claim for relief.

Because the Court will dismiss plaintiff's federal claims, the Court declines to exercise supplemental jurisdiction over any state law claims plaintiff may be understood to bring. *See* 28 U.S.C. § 1367(c)(3); *see also United Mine Workers v. Gibbs*, 383 U.S 715, 726 (1966) (if federal claims are dismissed before trial, remaining state claims should also be dismissed); *Crest Construction II, Inc. v. Doe*, 660 F.3d 346, 359 (8th Cir. 2011) (where all federal claims have been dismissed, district court's decision to decline supplemental jurisdiction over state claims is "purely discretionary").

Therefore, for all of the foregoing reasons, this case will be dismissed without prejudice. The Court will also deny as moot plaintiff's motion for injunctive relief.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion to accept the certified inmate account statement (Docket No. 4) is **DENIED** as moot.

IT IS FURTHER ORDERED that plaintiff must pay an initial filing fee of $81.91 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his

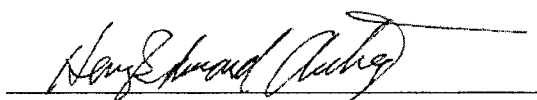
prison registration number; (3) this case number; and (4) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this case is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that plaintiff's motion for injunctive relief (Docket No. 5) is **DENIED** as moot.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 20th day of December, 2018.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY G. WATSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:18CV90 NCC
	)	
NATHAN B. STEWART, et al.,	)	
	)	
Defendants.	)	

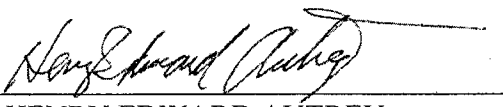
ORDER OF DISMISSAL WITHOUT PREJUDICE

In accordance with the Memorandum and Order entered herewith,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 20th day of December, 2018.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.