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File Name: 19a0036p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

TIMOTHY EUGENE SAMPSON,
Plaintiff-Appellant,

v.

CATHY M. GARRETT, Wayne County Clerk et al.,
Defendants-Appellees.

No. 18-1900

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:18-cv-12106—Sean F. Cox, District Judge.

Decided and Filed: March 6, 2019

Before: NORRIS, SUTTON, and COOK, Circuit Judges.

LITIGANT

ON BRIEF: Timothy Eugene Sampson, Kincheloe, Michigan, pro se.

OPINION

SUTTON, Circuit Judge. Timothy Sampson is serving a life sentence in a Michigan prison. He sued Wayne County, Michigan, and a host of state-court officials and private attorneys under 42 U.S.C. § 1983, alleging they conspired to deprive him of trial transcripts, exhibits, and other records to frustrate his constitutional right to access the court.

The district court dismissed Sampson's pro se complaint for failure to state a claim, 28 U.S.C. §§ 1915A, 1915(e)(2)(B), concluding first that a number of the defendants are immune

from suit or are not state actors, and second that *Heck v. Humphrey*, 512 U.S. 477 (1994), bars his access-to-the-court claim. We review the decision with fresh eyes. *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010).

Heck blocks a state prisoner's § 1983 claim if its success "would necessarily imply the invalidity of his conviction or sentence." 512 U.S. at 487. The idea is to channel what amount to unlawful-confinement claims to the place they belong: habeas corpus. *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005).

Whether *Heck* applies to an access-to-the-court claim alleging state interference with a direct criminal appeal is a new question for us. That it is a new question, however, does not necessarily make it a hard question. Because the right of access is "ancillary to [a lost] underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court," a successful access claim requires a prisoner to show that the defendants have scuttled his pursuit of a "nonfrivolous, arguable" claim. *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (quotation omitted).

Sampson maintains that he is entitled to damages because the defendants prevented him from using the trial transcripts and other materials in his direct—and unsuccessful—appeal. He could prevail on that claim only if he showed that the information could make a difference in a nonfrivolous challenge to his convictions. He could win in other words *only* if he implied the invalidity of his underlying judgment. *Heck* bars this kind of claim.

We are not alone in seeing it this way. *See Dennis v. Costello*, 189 F.3d 460 (2d Cir. 1999) (unpublished table decision) (*Heck* bars access-to-the-court claim concerning filing delays); *Saunders v. Bright*, 281 F. App'x 83, 85 (3d Cir. 2008) (per curiam) (*Heck* bars access-to-the-court claim concerning denial of trial transcripts); *Spence v. Hood*, 170 F. App'x 928, 930 (5th Cir. 2006) (per curiam) (*Heck* bars access-to-the-court claim concerning denial of trial transcripts); *Burd v. Sessler*, 702 F.3d 429, 434–35 (7th Cir. 2012) (*Heck* bars access-to-the-court claim concerning library access); *Moore v. Wheeler*, 520 F. App'x 927, 928 (11th Cir. 2013) (per curiam) (*Heck* bars access-to-the-court claim concerning denial of trial record).

Fuller v. Nelson, 128 F. App'x 584 (9th Cir. 2005), it's true, went the other way. It held that *Heck* does not bar an access-to-the-court claim alleging that state officials kept a prisoner from filing an appeal. *Id.* at 586. As the Ninth Circuit saw it, *Heck* does not apply where "[t]he remedy for the unconstitutional deprivation . . . would not be immediate release." *Id.* The Ninth Circuit gestured at *Wilkinson v. Dotson*, 544 U.S. 74 (2005), for that idea. *Fuller*, 128 F. App'x at 586.

That reflects a crabbed reading of *Heck* as well as *Wilkinson*. *Wilkinson* held that *Heck* does not bar a due process challenge to state parole-eligibility procedures. 544 U.S. at 82. While the Court noted that the prisoners were not requesting release, but rather new procedures in mere hopes of swifter parole, it did not consider *Heck* inapplicable *only* because the claims' success would not mean release. *Id.* The Court emphasized that the new parole procedures (or even a grant of parole for that matter) would not imply the invalidity of the prisoners' original sentences. *Id.* at 83–84; *see Skinner v. Switzer*, 562 U.S. 521, 533–34 (2011) (explaining *Wilkinson*'s two-fold rationale in holding that *Heck* does not bar a due process challenge to denial of DNA testing). By contrast, a favorable judgment on Sampson's access-to-the-court claim *would* necessarily bear on the validity of his underlying judgment, because that is exactly what he says the defendants kept him from contesting fairly. All of this may explain why the Ninth Circuit's unpublished decision in *Fuller* does not even appear to have force in the Ninth Circuit. *See Pineda v. Nev. Dep't of Prisons*, 459 F. App'x 675, 675 (9th Cir. 2011) (per curiam) (*Heck* bars access-to-the-court claim concerning forced absence from pretrial evidentiary hearing).

That takes care of the access claim. To the extent Sampson's multi-dimensional complaint alleges access claims unrelated to his criminal appeal or other claims that do not implicate *Heck*, the claims do not clear the plausibility hurdle. Even a pro se prisoner must link his allegations to material facts, *Lappin*, 630 F.3d at 471, and indicate what each defendant did to violate his rights, *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008). Sampson does neither.

We affirm, but order the district court to amend its judgment to dismiss without prejudice Sampson's access claim, *see Diehl v. Nelson*, 198 F.3d 244 (6th Cir. 1999) (unpublished table decision), as well as his state-law claims, *see Taylor v. First of Am. Bank-Wayne*, 973 F.2d 1284, 1289 (6th Cir. 1992).

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18-1900

TIMOTHY EUGENE SAMPSON,

Plaintiff - Appellant,

v.

CATHY M. GARRETT, Wayne County Clerk et al.,

Defendants - Appellees.

FILED
Mar 06, 2019
DEBORAH S. HUNT, Clerk

Before: NORRIS, SUTTON, and COOK, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was submitted on the brief of the appellant, pro se.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED. IT IS FURTHER ORDERED that the matter is REMANDED to the district court with instructions to amend its judgment to dismiss without prejudice Sampson's access and state-law claims.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY EUGENE SAMPSON,

Plaintiff,

v.

Case No. 2:18-cv-12106
Hon. Sean F. Cox

CATHY M. GARRETT, *et al.*,

Defendants.
_____/

ORDER SUMMARILY DISMISSING CASE

Plaintiff Timothy Eugene Sampson, a state inmate incarcerated at the Chippewa Correctional Facility, has filed a *pro se* complaint pursuant to 28 U.S.C. § 1983. The Court granted plaintiff's application to proceed *in forma pauperis*, and he is proceeding without prepayment of the filing fee in this action under 28 U.S.C. § 1915(a)(1). After careful consideration of the complaint, the court summarily dismisses the case.

I. Background

Plaintiff is incarcerated as a result of his Wayne County Circuit Court conviction for first-degree murder, conspiracy to commit first-degree murder, felon in possession of a firearm, and commission of a felony with a firearm. Facts surrounding plaintiff's conviction were summarized in the opinion denying him relief on direct appeal:

> Defendants' convictions arise from the death of Brandon Buck, whose unrecognizable body was discovered inside a burning minivan during the early morning hours of April 18, 2011. In September 2011, a witness, Ayesha White, came forward and reported observing the events that led to Buck's death. White was the only witness to the events, and was the only reason authorities were able to determine whose body was found in the van. White stated that she was present when Warner, at Sampson's direction, shot Buck. Afterward, Cummings obtained a

> minivan and Buck's body was placed inside, and then Cummings poured gasoline inside the minivan and set it on fire. An autopsy determined that Buck was already dead before the fire, having died from multiple gunshot wounds.

People v. Sampson, 2014 Mich. App. LEXIS 1017, 2014 WL 2553303 (Mich. App. June 3, 2014).

The complaint names thirteen defendants: (1) Cathy M. Garrett - Wayne County Clerk, (2) Margaret VanHouten - Wayne Circuit Judge, (3) Jason Williams - Assistant Wayne County Prosecutor, (4) Mary Casey - Judge VanHouten's Law Clerk, (5) Unknown Wayne County Clerk, (6) Kim Worthy - Wayne County Prosecutor, (7) County of Wayne, (8) Jane Doe - court reporter, (9) Jonathan Simon - plaintiff's appellate counsel, (10) Michael Harrison, Assistant Wayne County Prosecutor, (11) Patricia Fresard, Wayne Circuit Judge, (12) Unknown Wayne County Officials, and (13) Wayne Circuit Court.

The prolix complaint makes allegations regarding the alleged misconduct, conspiracy, and acts of retaliation by the defendants during plaintiff's state court appeal. Plaintiff seems to chiefly allege that the defendants conspired and retaliated against him by failing to provide him with an accurate and complete record of proceedings in the trial court, depriving him of the ability to successfully pursue appellate relief in the state courts. The complaint seeks monetary damages in the amount of $3,800,000.

II. Standard

Civil complaints filed by a *pro se* prisoner are subject to the screening requirements of 28 U.S.C. § 1915(e)(2). *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000). Section 1915(e)(2) requires district courts to screen and to dismiss complaints that are frivolous, fail to state a claim upon which relief can be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997).

A complaint is frivolous and subject to sua sponte dismissal under § 1915(e) if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A plaintiff fails to state a claim upon which relief may be granted, when, construing the complaint in a light most favorable to the plaintiff and accepting all the factual allegations as true, the plaintiff undoubtedly can prove no set of facts in support if his claims that would entitle him to relief. *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996); *Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996); *Wright v. MetroHealth Med. Ctr.*, 58 F.3d 1130, 1138 (6th Cir. 1995).

III. Discussion

Plaintiff alleges that the various actions by the defendants resulted in his continued confinement by virtue of his unlawful conviction when they scuttled his state court appeal by failing to provide him with an accurate and complete record of his trial court proceedings. In addition to the the fact that some of the defendants named in the complaint are not state actors, *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982), are immune from suit, *Welch v. Texas Dep't. Highways*, 483 U.S. 468, 472 (1987), or are not legal entities capable of being sued at all, *Haverstick Enters. v. Fin. Fed. Credit*, 32 F.3d 989, 992, n.1 (6th Cir. 1994), plaintiff's complaint is barred by the favorable-termination requirement set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994).

In *Heck* the Supreme Court held that claims such as those raised by plaintiff in this action may not be brought in a civil suit:

> [W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Id., 512 U.S. at 486-87.

The allegations in Plaintiff's complaint, if true, would necessarily imply the invalidity of his conviction. He asserts that he had valid claims to raise in his state court appeal, but he was unable to fully and fairly raise them because the defendants did not provide him with a complete and accurate record. Accordingly, under *Heck*, his complaint must be dismissed.

A petition for a writ of habeas corpus provides the appropriate vehicle for challenging the fact or duration of a prisoner's confinement in federal court. *Preiser v. Rodriguez*, 411 U.S. 475, 486-87 (1973). In fact, plaintiff has filed a petition for writ of habeas corpus in this Court raising claims regarding the provision of a complete and accurate record during his state court appeal. *See Sampson v. Horton*, E.D. Mich. No. 18-cv-10020, Dkt. 1 at 9-10. That case is pending.

IV. Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's action will be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915A(b) and 42 U.S.C. § 1997e(c).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal.

IT IS SO ORDERED.

Dated: July 19, 2018

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on July 19, 2018, the foregoing document was served on counsel of record via

electronic means and upon Timothy Sampson via First Class mail at the address below:

Timothy Eugene Sampson
492307
CHIPPEWA CORRECTIONAL FACILITY
4269 W. M-80
KINCHELOE, MI 49784

s/J. McCoy
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY EUGENE SAMPSON,

Plaintiff,

v.

Case No. 2:18-cv-12106
Hon. Sean F. Cox

CATHY M. GARRETT, et al.,

Defendants.
_____/

JUDGMENT

IT IS ORDERED AND ADJUDGED that pursuant to this Court's Order dated July 19, 2018, this cause of action is **DISMISSED**.

Dated: July 19, 2018

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on July 19, 2018, the foregoing document was served on counsel of record via electronic means and upon Timothy Sampson via First Class mail at the address below:

Timothy Eugene Sampson
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CHIPPEWA CORRECTIONAL FACILITY
4269 W. M-80
KINCHELOE, MI 49784

s/J. McCoy
Case Manager

Appendix D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY SAMPSON,

Plaintiff,

Case No. 2:18-cv-12106
Hon. Sean F. Cox

v,

CATHY M. GARRETT, ET AL,

Defendants.
_____/

ORDER DENYING MOTION FOR RECONSIDERATION [Dkt. 7]

Plaintiff Timothy Sampson, a state prisoner, filed this case under 42 U.S.C. § 1983. Plaintiff asserts in his complaint that the defendants, employees and officials of the Wayne Circuit Court and the Wayne County Prosecutor's Office as well as his defense attorneys, all denied him access to his state criminal records preventing him from raising meritorious claims on state collateral review and in his pending federal habeas case. The complaint seeks monetary damages as well as injunctive relief. The Court summarily dismissed the case under the favorable-termination requirement set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994). Presently before the Court is Petitioner's motion for reconsideration. Petitioner asserts that *Heck* does not apply to his case because in addition to damages, he seeks prospective injunctive relief in the form of access to his records.

Local Rule 7.1(h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the

case must result from a correction thereof. A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

The elements of a viable access-to-courts claim in the Sixth Circuit are: (1) "a nonfrivolous underlying claim", (2) "obstructive actions by state actors", (3) "'substantial[] prejudice' to the underlying claim that cannot be remedied by the state court", and (4) "a request for relief which the plaintiff would have sought on the underlying claim and is now otherwise unattainable." *Flagg v. City of Detroit*, 715 F.3d 165, 174 (6th Cir. 2013) (internal citations omitted). Despite Petitioner's arguments to the contrary, success in this suit would necessarily imply the invalidity of his conviction, and is thus subject to *Heck's* favorable termination rule. For Plaintiff to prevail he must demonstrate that he has a nonfrivolous underlying appellate claim, which in turn would imply the invalidity of his conviction. See *Burd v. Sessler*, 702 F.3d 429, 434-35 (7th Cir. 2012); *Ray v. Hogg*, 2007 WL 2713902, *6 (E.D. Mich. September 18, 2007). It should also be noted that Petitioner has a remedy in his pending federal habeas case to obtain access to the records of his state criminal proceeding as the Respondent will be required under Rule 5 to file the relevant parts of the state court record. Accordingly, Petitioner's motion for reconsideration is **DENIED**.

SO ORDERED.

Dated: September 21, 2018

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on September 21, 2018, the foregoing document was served on counsel of record via electronic means and upon Timothy Sampson via First Class mail at the address below:

Timothy Eugene Sampson 492307
CHIPPEWA CORRECTIONAL FACILITY
4269 W. M-80
KINCHELOE, MI 49784

s/J. McCoy
Case Manager

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY: _____ Deputy

No. 18-1900

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 28, 2019
DEBORAH S. HUNT, Clerk

TIMOTHY EUGENE SAMPSON,

Plaintiff-Appellant,

v.

CATHY M. GARRETT, WAYNE COUNTY CLERK, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: NORRIS, SUTTON, and COOK, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk