

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 19 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL ALLEN CHANNEL, Sr.,

Plaintiff-Appellant,

v.

JOHN BRINKER, Deputy County Attorney;
et al.,

Defendants-Appellees.

No. 19-16319

D.C. No. 2:19-cv-02018-DWL-
CDB

District of Arizona, Phoenix

ORDER

Before: FARRIS, TASHIMA, and NGUYEN, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On July 9, 2019, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's July 9, 2019 order, and the opening brief received on July 16, 2019, we conclude this appeal is frivolous.

We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

“Appendix A”

All other pending motions are denied as moot.

DISMISSED.

MIME-Version:1.0 From:azddb_responses@azd.uscourts.gov To:azddb_nefs@localhost.localdomain
Message-Id: Subject:Activity in Case 2:19-cv-02018-DWL--CDB Channel v. Brinker et al Order on
Motion for Application for Leave to Proceed In Forma Pauperis Content-Type: text/html

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U.S. District Court

DISTRICT OF ARIZONA

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Case Name: Channel v. Brinker et al

Case Number: 2:19-cv-02018-DWL--CDB

Filer:

Document Number: 8

Docket Text:

ORDER – Plaintiff's [2] Application to Proceed In Forma Pauperis is granted. The [1] Complaint is dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly. The Clerk of Court must make an entry on the docket stating that the dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g). Plaintiff's [6] Motion for Status is granted to the extent this Order informs him of the status of this case. Plaintiff's [7] Motion to Present is denied as moot. The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal of this decision would be taken in good faith and finds Plaintiff may not appeal in forma pauperis. See document for complete details. Signed by Judge Dominic W Lanza on 6/19/19. (MSA)

2:19-cv-02018-DWL--CDB Notice has been electronically mailed to:

2:19-cv-02018-DWL--CDB Notice will be sent by other means to those listed below if they are affected by this filing:

Michael Allen Channel, Sr
#268654
TUCSON-AZ-TUCSON-ASPC-WHETSTONE
WHETSTONE UNIT
P.O. BOX 24402
TUCSON, AZ 85734

The following document(s) are associated with this transaction:

44 Appendix B⁹⁹

ASH

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Allen Channel, Sr.,
10 Plaintiff,

11 v.

12 John Brinker, et al.,
13 Defendants.
14

No. CV 19-02018-PHX-DWL (CDB)

ORDER

15 Plaintiff Michael Allen Channel, Sr., who is confined in the Arizona State Prison
16 Complex-Tucson, has filed a pro se civil rights Complaint pursuant to 42 U.S.C.
17 § 1983 (Doc. 1), an Application to Proceed In Forma Pauperis (Doc. 2), a Motion for
18 Status (Doc. 6), and a “Motion to Present Rules and Regulations Operations Order 3.13
19 Phoenix Police Department Rev.06/14..Page 13 Rule of Conduct..A.Employee
20 Truthfulness (1)(2)(3)(B..Fraud/Reports/Offical Paperwork (1).(2)(4..to Support Count I,
21 II, and III” (Doc. 7). The Court will dismiss this action.

22 **I. Application to Proceed In Forma Pauperis and Filing Fee**

23 The Court will grant Plaintiff’s Application to Proceed In Forma Pauperis. 28
24 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
25 § 1915(b)(1). The Court will not assess an initial partial filing fee. *Id.* The statutory filing
26 fee will be collected monthly in payments of 20% of the previous month’s income credited
27 to Plaintiff’s trust account each time the amount in the account exceeds \$10.00. 28 U.S.C.
28 § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government

1 agency to collect and forward the fees according to the statutory formula.

2 **II. Statutory Screening of Prisoner Complaints**

3 The Court is required to screen complaints brought by prisoners seeking relief
4 against a governmental entity or an officer or an employee of a governmental entity. 28
5 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
6 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
7 relief may be granted, or that seek monetary relief from a defendant who is immune from
8 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

9 A pleading must contain a “short and plain statement of the claim *showing* that the
10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
11 not demand detailed factual allegations, “it demands more than an unadorned, the-
12 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
13 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice.” *Id.*

15 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
16 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
17 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
18 that allows the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
20 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
21 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
22 allegations may be consistent with a constitutional claim, a court must assess whether there
23 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
25 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
26 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent
27 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
28 U.S. 89, 94 (2007) (per curiam)).

1 If the Court determines that a pleading could be cured by the allegation of other
2 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
3 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
4 Plaintiff's Complaint will be dismissed for failure to state a claim, without leave to amend
5 because the defects cannot be corrected.

6 **III. Complaint**

7 In his Complaint, Plaintiff names Deputy Maricopa County Attorneys John Brinker,
8 Kathryn E. McCormick, Michael W. Baker, and Denise O'Rourke. Plaintiff makes
9 allegations related to the Defendants' acts in prosecuting him in Maricopa County Superior
10 Court case no. CR2013-432457, in which Plaintiff was convicted of misconduct involving
11 weapons and sentenced to 10 years' imprisonment, and for which he is presently
12 incarcerated.

13 **IV. Failure to State a Claim**

14 Prosecutors are absolutely immune from liability under § 1983 for their conduct in
15 "initiating a prosecution and in presenting the State's case" insofar as that conduct is
16 "intimately associated with the judicial phase of the criminal process." *Buckley v.*
17 *Fitzsimmons*, 509 U.S. 259, 270 (1993) (citing *Imbler v. Pachtman*, 424 U.S. 409, 430
18 (1976)); *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986). Immunity extends to
19 prosecutors for "eliciting false or defamatory testimony from witnesses" or for making
20 false or defamatory statements during, and related to, judicial proceedings. *Buckley*, 509
21 U.S. at 270 (citations omitted). This immunity also includes liability for suppression of
22 evidence *at trial*. *Paine v. City of Lompoc*, 265 F.3d 975, 982, (9th Cir. 2001) (emphasis
23 in original).

24 Here, all of Plaintiff's allegations are directed at the Defendants' actions in
25 prosecuting him in his underlying state criminal case. As such, Defendants are immune
26 from this suit. Because this defect cannot be cured by amendment, the Complaint will be
27 dismissed without leave to amend and this action will be terminated.¹

28 ¹ It further appears that Plaintiff's claims are premature. A prisoner's claim for damages cannot be brought under 42 U.S.C. § 1983 if "a judgment in favor of the plaintiff

1 **IT IS ORDERED:**

2 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.

3 (2) As required by the accompanying Order to the appropriate government
4 agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing
5 fee.

6 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to
7 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.


8 (4) The Clerk of Court must make an entry on the docket stating that the
9 dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

10 (5) Plaintiff's Motion for Status (Doc. 6) is **granted** to the extent this Order
11 informs him of the status of this case.

12 (6) Plaintiff's "Motion to Present..." (Doc. 7) is **denied** as moot.

13 (7) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)
14 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal
15 of this decision would be taken in good faith and finds Plaintiff may not appeal in forma
16 pauperis.

17 Dated this 19th day of June, 2019.

18
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20 
21 _____
22 Dominic W. Lanza
23 United States District Judge
24
25

26 _____
27 would necessarily imply the invalidity of his conviction or sentence," unless the prisoner
28 demonstrates that the conviction or sentence has previously been reversed, expunged, or
otherwise invalidated. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). If Plaintiff seeks
the invalidation of his sentence, or any relief which would result in immediate or speedier
release, his exclusive remedy is a petition for habeas corpus. *Preiser v. Rodriguez*, 411
U.S. 475, 488-90 (1973).

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U.S. District Court

DISTRICT OF ARIZONA

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Case Name: Channel v. Brinker et al

Case Number: 2:19-cv-02018-DWL--CDB

Filer:

WARNING: CASE CLOSED on 06/20/2019

Document Number: 10

Docket Text:

CLERK'S JUDGMENT – IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed June 20, 2019, Plaintiff to take nothing, and the complaint and action are dismissed for failure to state a claim. This dismissal may count as a strike under 28 U.S.C. § 1915(g). (MSA)

2:19-cv-02018-DWL--CDB Notice has been electronically mailed to:

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Michael Allen Channel, Sr
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Original filename:n/a

Electronic document Stamp:

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Allen Channel, Sr.,

10 Plaintiff,

11 v.

12 John Brinker, et al.,

13 Defendants.
14

NO. CV-19-02018-PHX-DWL (CDB)

JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed June
18 20, 2019, Plaintiff to take nothing, and the complaint and action are dismissed for failure
19 to state a claim. This dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

20 Brian D. Karth
21 District Court Executive/Clerk of Court

22 June 20, 2019

23 By s/ Michelle Sanders
24 Deputy Clerk
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U.S. District Court

DISTRICT OF ARIZONA

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Case Name: Channel v. Brinker et al

Case Number: 2:19-cv-02018-DWL---CDB

Filer:

Document Number: 9

Docket Text:

ORDER Directing Monthly Payments be made from Prison Account of Michael Allen Channel, Sr.. Signed by Judge Dominic W Lanza on 6/19/19. (MSA)

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ASH

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michael Allen Channel, Sr.,
Plaintiff,

v.

John Brinker, et al.,
Defendants.

No. CV 19-02018-PHX-DWL (CDB)

**ORDER FOR PAYMENT
OF INMATE FILING FEE**

TO: THE DIRECTOR OF THE ARIZONA DEPARTMENT OF CORRECTIONS

Plaintiff Michael Allen Channel, Sr., inmate #268654, who is confined in the Arizona State Prison Complex-Tucson, must pay the statutory filing fee of \$350.00. Plaintiff is not assessed an initial partial filing fee. Plaintiff must pay the filing fee in monthly payments of 20% of the preceding month's income credited to Plaintiff's trust account. The Director of the Arizona Department of Corrections or his/her designee must collect and forward these payments to the Clerk of Court each time the amount in the account exceeds \$10.00.

IT IS ORDERED: —

(1) The Director of the Arizona Department of Corrections or his/her designee must collect the \$350.00 filing fee from Plaintiff's trust account in monthly payments of 20% of the preceding month's income credited to the account. Payments must be forwarded to the Clerk of Court each time the amount in the account exceeds \$10.00. The payments must be clearly identified by the name and number assigned to this action.

(4) The Clerk of Court must forward a copy of this Order to Financial Administration for the Phoenix Division of the United States District Court for the District of Arizona. Financial Administration must set up an account to receive payments on the filing fee for this action and must notify the Court when the filing fee is paid in full.

Dated this 19th day of June, 2019.

- 2 -

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