

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 12 2019

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

KENNY BROWN,

Plaintiff-Appellant,

v.

MENTAL HEALTH REHABILITATION,

Defendant-Appellee.

No. 18-17437

D.C. No. 5:18-cv-06069-LHK
Northern District of California,
San Jose

ORDER

Before: CANBY, GRABER, and MURGUIA, Circuit Judges.

The district court certified that this appeal is frivolous and not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On February 13, 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 and the response to the court's February 13, 2019 order, 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).

DISMISSED.

11 KENNY BROWN,

12 Plaintiff,

13 v.

14 MENTAL HEALTH REHABILITATION,

15 Defendant.

16 Case No. 18-CV-06069 LHK (PR)

17 **JUDGMENT**

18 The court has dismissed the instant action. A judgment of dismissal without prejudice is
19 entered. The clerk shall close the file.

20 **IT IS SO ORDERED.**

21 Dated: 12/4/2018

Lucy H. Koh

22 LUCY H. KOH
23 UNITED STATES DISTRICT JUDGE

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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KENNY BROWN,
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CERTIFICATE OF SERVICE

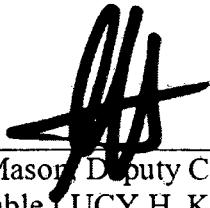
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/4/2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kenny Brown ID: V-22473
California Men's Colony State Prison
P.O. Box 8101
San Luis Obispo, CA 93409-8101

Dated: 12/4/2018

Susan Y. Soong
Clerk, United States District Court

By: 
Irene Mason, Deputy Clerk to the
Honorable LUCY H. KOH

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11 KENNY BROWN,

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Case No. 18-CV-06069 LHK (PR)

ORDER OF DISMISSAL

16 Plaintiff, a California prisoner proceeding *pro se*, has filed a civil rights complaint,
17 pursuant to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate
18 order. For the reasons stated below, the court DISMISSES the complaint without prejudice.

19 **DISCUSSION**

20 A. Standard of review

21 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
22 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
23 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
24 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek

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26 Case No. 18-CV-06069 LHK (PR)
ORDER OF DISMISSAL

1 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),
2 (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police*
3 *Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
5 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
6 alleged violation was committed by a person acting under the color of state law. *See West v.*
7 *Atkins*, 487 U.S. 42, 48 (1988).

8 B. Legal claims

9 In the complaint, plaintiff alleges that when he arrived at San Quentin State Prison on
10 February 4, 2004, he did not have any mental health issues. Plaintiff states that as a result of his
11 “unlawful [] sentence,” plaintiff began to have developmental mood disorders, major depression,
12 and other mental health issues that he did not have before he was imprisoned. Plaintiff also argues
13 that he was denied fair notice that his 1993 prior conviction was going to be used as an
14 enhancement and that the enhancement violated the Double Jeopardy Clause. The remainder of
15 plaintiff’s complaint contains arguments as to why plaintiff believes his 1993 prior conviction
16 should not have been used to enhance his sentence. Plaintiff seeks damages and reversal of his
17 conviction.

18 With regard to plaintiff’s claim that his “unlawful sentence” has resulted in mental health
19 issues, as best the court can tell, plaintiff appears to be alleging that the “unlawful sentence” is a
20 violation of the U.S. Constitution. This claim is barred by *Heck v. Humphrey*, 512 U.S. 477
21 (1994). In order to recover damages for an allegedly unconstitutional imprisonment, a 42 U.S.C. §
22 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal,
23 expunged by executive order, declared invalid by a state tribunal authorized to make such
24 determination, or called into question by a federal court’s issuance of a writ of habeas corpus. *Id.*
25 at 486-87. A claim for damages bearing that relationship to a conviction or sentence that has not

1 been so invalidated is not cognizable under Section 1983. *Id.* at 487. Here, there is no indication
2 that plaintiff's sentence is "unlawful" or that it has been invalidated and thus, plaintiff's claim is
3 not cognizable. Accordingly, this claim is dismissed without prejudice as barred under *Heck*.

4 Plaintiff's remaining claims are direct challenges to his conviction or sentence. They are
5 also not cognizable claims in a federal civil rights complaint. "Federal law opens two main
6 avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. §
7 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42
8 U.S.C. § 1983. Challenges to the lawfulness of confinement or to particulars affecting its duration
9 are the province of habeas corpus.'" *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting
10 *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). "An inmate's challenge to the circumstances of
11 his confinement, however, may be brought under § 1983." *Id.*

12 Habeas is the "exclusive remedy" for the prisoner who seeks "immediate or speedier
13 release" from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011) (quoting *Wilkinson*
14 *v. Dotson*, 544 U.S. 74, 82 (2005)). A claim that meets the statutory criteria of Section 1983 may
15 be asserted unless it is within the core of habeas corpus because "its success would release the
16 claimant from confinement or shorten its duration." *Thornton v. Brown*, 757 F.3d 834, 841 (9th
17 Cir. 2014) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

18 Here, success in plaintiff's challenges to his conviction or sentence would shorten the
19 duration of plaintiff's confinement. Thus, plaintiff's claims are not properly asserted in a civil
20 rights complaint and thus are dismissed without prejudice to plaintiff's re-filing them in a federal
21 habeas petition.

22 Although Federal Rule of Civil Procedure 15(a) is to be liberally applied in favor of
23 amendments in general, the court finds that giving plaintiff leave to amend would be an exercise in
24 futility because it is not factually possible for plaintiff to amend the complaint so as to cure the
25 deficiencies. See *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994).

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ORDER OF DISMISSAL

CONCLUSION

Plaintiff's claim that he suffered mental health issues as a result of an unlawful sentence is DISMISSED without prejudice under *Heck*. Plaintiff's claims challenging his conviction and sentence are DISMISSED without prejudice to re-filing them in a habeas petition. The clerk shall terminate all pending motions and close the file.

IT IS SO ORDERED.

DATED: 12/4/2018

Lucy H. Koh

LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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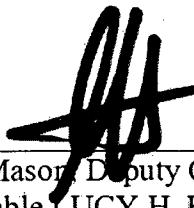
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Brown's motion for reconsideration (Docket No. 8) is denied.

No further filings will be entertained in this closed case.