UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY, and HOSSIE WELCH, on their own behalf and on behalf of the class of all persons similarly situated,

Plaintiffs,

v.

GRAY DAVIS, Governor of the State of California, et al.,

Defendants.

_____/

NO. CIV. S-94-671 LKK/GGH

O R D E R

Plaintiffs filed this class action lawsuit alleging that defendants' parole revocation practices violate the Due Process Clause of the Fourteenth Amendment. Defendants now move to dismiss the complaint as barred by Heck v. Humphrey, 512 U.S. 477 (1994) and its progeny.

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I.

THE COMPLAINT

The plaintiff class was certified on December 1, 1994 pursuant to Fed. R. Civ. P. 23(b)(2) to consist of three categories: (1) California parolees at large; (2) California parolees in custody who are awaiting a final revocation hearing; and (3) California parolees in custody who have been found in violation of parole and who have been sentenced to prison custody.

Plaintiffs aver that the Board of Prison Terms ("BPT") violates due process during the parole revocation process. Specifically, the class plaintiffs allege constitutional deprivations resulting from, inter alia, unlawful arrests, see Fourth Amended Complaint, filed October 14, 1998, ("FAC") ¶ 2; lack of preliminary hearings, see Plaintiff's Statement of Claims, filed May 17, 1999, ("SOC") at 2;[1] invalid waiver of the right to due process at screening hearing, see id. at 3; failure to provide parolees with written notice of alleged parole violations, see SOC

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[1] In defining the class allegations, the court looks not only to the Fourth Amended Complaint but also to Plaintiff's Statement of Claims, filed with the court on May 17, 1999. Federal Rule of Civil Procedure 12(b) provides that if, on a motion to dismiss for failure to state a claim upon which relief may be granted, matters outside the complaint are presented and considered, the motion should be treated as one for summary judgment under Rule 56. Matters that are properly subject to judicial notice, however, may be considered by a court without converting a motion to dismiss into one for summary judgment. See Mack v. South Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986). Plaintiffs' Statement of Claims is a document subject to judicial notice. See Fed. R. Evid. 201. Moreover, I may not only judicially notice the existence of that document, but the substance of it as well. See Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398, 1403 (9th Cir. 1989).

at 4; failure to disclose the evidence against parolee, see id.; denial of the right to be heard at parole revocation hearings, see id.; denial of right to call witnesses at parole revocation hearings, see SOC at 2; denial of the right to cross examine material witnesses at parole revocation hearings, see id.; denial of counsel at parole revocation hearings, see SOC at 2-3; failure to provide a detached and neutral hearing officer, see id.; and failure to provide a written statement by the factfinder as to the evidence relied upon and reasons for revoking parole. See id.

The Fourth Amended Complaint seeks declaratory and prospective injunctive relief requiring the state to protect the class members' constitutional rights under the Fourteenth Amendment.[2]

II.

FED. R. CIV. P. 12(b)(6)

On a motion to dismiss, the allegations of the complaint must be accepted as true. See Cruz v. Beto, 405 U.S. 319, 322 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded"

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[2] Specifically, plaintiffs request that this court

> [a]djudge and declare that the policies, patterns, conduct and practices are in violation of the rights of the plaintiffs . . . [and] [¶] . . . permanently enjoin defendants, their agents, employees, and all person acting in concert with them, from subjecting plaintiffs and the class they represent to the unconstitutional and illegal policies, patterns, conduct and practices described above.

FAC at 14.

allegations of the complaint. See Retail Clerks Intern. Ass'n, Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.; see also Wheeldin v. Wheeler, 373 U.S. 647, 648 (1963) (inferring fact from allegations of complaint).

In general, the complaint is construed favorably to the pleader. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). So construed, the court may not dismiss the complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In spite of the deference the court is bound to pay to the plaintiff's allegations, however, it is not proper for the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that the defendants have violated the . . . laws in ways that have not been alleged." Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983).

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III.

MOTION FOR RECONSIDERATION

This is defendants' second motion to dismiss plaintiffs' class action lawsuit as barred by Heck, 512 U.S. 477. The court denied defendants' prior motion because the complaint "seeks only prospective relief of parole revocation and does not challenge the current status of any plaintiff." Order dated November 14, 1994 at 2.[3] Though not styled as a motion for reconsideration, the defendants' pending motion must be viewed as one to reconsider that order. Based on the analysis below, I conclude that reconsideration of that ruling is appropriate, but upon reconsideration an order denying the motion is also appropriate.

A. STANDARDS

"Under the `law of the case' doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) (citing Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)). Although motions to reconsider are directed to the sound discretion of the court, see Kern-Tulare Water Dist. v.

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[3] Plaintiffs' prayer for declaratory relief was interpreted by the court then, as it is now, as a general declaration that defendants' policies violate the Due Process Clause and not a specific declaration that, in any particular adjudication, the parole board violated or is violating the Due Process Clause. See Order at 2 ("plaintiffs . . . do[] not challenge the current status of any plaintiff.")

City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986), aff'd in part and rev'd in part on other grounds, 824 F.2d 514 (9th Cir. 1987), considerations of judicial economy weigh heavily in the process. Generally speaking, before reconsideration may be granted there must be a change in the controlling law or facts, the need to correct a clear error, or the need to prevent manifest injustice. See Alexander, 106 F.3d at 876.

Defendants argue that since this court's 1994 denial of their motion, the controlling law has changed and now precludes plaintiffs' claims. While I agree that a subsequent case provides additional information on the applicability of Heck to the matter at bar thus justifying reconsideration, I conclude it does not alter the court's earlier conclusion.

B. HECK AND EDWARDS

This court's prior decision fell between the High Court's decision in Heck and Edwards v. Balisok, 520 U.S. 641 (1997). Because Balisok deals directly with the application of Heck to prison disciplinary proceedings reconsideration of the court's previous order is appropriate. As I now explain, however, the extension of Heck in Balisok does not effect the basis for this court's 1994 denial of defendants' motion.

In Heck v. Humphrey, the plaintiff sought to recover compensatory damages under § 1983 for an allegedly unlawful, unreasonable, and arbitrary investigation leading to his arrest and conviction for murder. 512 U.S. at 478-79. As I have

previously noted, the effect of Heck is that "even if a claimant [only] seeks damages under § 1983, if the suit requires a determination of the constitutionality of the procedures underlying the prisoner's confinement or its duration, the prisoner cannot [proceed] under § 1983, and instead must proceed under habeas." Marquez v. Guttierez, 51. F.Supp.2d 1020, 1022 (E.D. Cal. 1999). As noted, Balisok "extended Heck to prison disciplinary proceedings." Id. at 1023. Plaintiff there sued Washington state prison officials under § 1983 alleging that the procedures used in a disciplinary hearing which deprived him of good time credits violated due process. Specifically, he charged that the hearing officer concealed exculpatory witness statements and therefore intentionally denied him the opportunity to present evidence on his own behalf. Balisok sought "a declaration that the procedures employed [in his good time credit revocation] violated due process, compensatory and punitive damages for use of the unconstitutional procedures, [and] an injunction to prevent future violations." Balisok, 520 U.S. at 643. The Court held that Heck barred his damage claim because the plaintiff's allegations of bias and deceit on the part of the hearing officers, if proven, would "necessarily imply the invalidity of the deprivation of his good time credits." Id. at 646.

The Court noted, however, that plaintiff also sought prospective injunctive relief concerning alleged routine violations of due process. The Court remanded that claim to the

district court for further proceedings since "[o]rdinarily, a prayer for such prospective relief will not `necessarily imply' the invalidity of a previous loss of good time credits and so may properly be brought under § 1983." Id. at 648. The Court's holding in that regard appears inevitable if the basis for the Court's Heck jurisprudence is kept in mind.

The ultimate rationale for Heck and its progeny is that claims related to unconstitutional procedures resulting in confinement fall exclusively within habeas, and thus outside § 1983. See id. at 481 (citing Preiser v. Rodriguez, 411 U.S. 475 (1975)). Accordingly, if a claim falls outside of the court's habeas jurisdiction and otherwise falls within the reach of § 1983, Heck is not a barrier to jurisdiction. As I now explain, such is the case with the suit at bar, which seeks prospective injunctive relief.

The sine qua non of a habeas action is that the petitioner complains that he is confined in violation of the Constitution. See Maleng v. Cook, 490 U.S. 488, 490 (1989). The essence of a suit for prospective relief, however, is that while the plaintiff is not presently suffering the loss that is the subject of the suit, he will. Because plaintiffs' claims do not address their present confinement but only future conduct, they fall outside habeas, and because they are predicated on asserted constitutional violations, they fall within § 1983.[4] In sum,

[4] It is also for this reason that the plaintiffs' complaint does not run afoul of the requirement that federal courts abstain

then, Balisok does not affect this court's 1994 denial of defendants' Heck motion insofar as it relied on the plaintiffs' prayer for future injunctive relief and declaratory relief.[5]

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from intervening in pending state court adjudications. See Young v. Harris, 401 U.S. 37, 46 (1971). To the extent that evidence of the plaintiffs' individual experiences before the BPT will be relied upon in proving the class claims, this court has previously determined that Heck and its progeny do not bar the introduction of such evidence. See Marquez, 51 F.Supp.2d at 1024.

[5] Ninth Circuit decisions since Heck do not disturb the reasoning underlying this court's 1994 decision since they do not address future injunctive relief. See, e.g., Gotcher v. Wood, 122 F.3d 39, 39 (9th Cir. 1997) ("Edwards forecloses Gotcher's entire compensatory claim under 42 U.S.C. § 1983.") (emphasis added); Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997) ("Appellant's claim for damages amounts to a collateral attack on his denial of parole."); Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997) ("[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") (citation omitted); Smithhart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996) (plaintiff's damage claim precluded under Heck as it would render his conviction invalid).

The court's holding in Harvey v. Waldron, 210 F.3d 1008, 1014 (9th Cir. 2000) (Heck bar on suits for damages applies to pending criminal charges) is inapposite because, as noted in footnote 3, supra, the plaintiffs do not challenge past or pending parole revocations. Finally, this court has previously found Clark v. Stadler, 154 F.3d. 186 (5th Cir. 1998), to the extent it reaches a different conclusion unpersuasive. See Marquez, 51 F.Supp.2d at 1025.

IV.

ORDER

For all the above reasons, defendants' motion to reconsider is GRANTED and, upon reconsideration, defendants' motion to dismiss is DENIED.

IT IS SO ORDERED.

DATED: September 6, 2000.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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United States District Court
for the
Eastern District of California
September 8, 2000

* * CERTIFICATE OF SERVICE * *

2:94-cv-00671

Valdivias

v.

Wilson et al

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

That on September 8, 2000, 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, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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