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IN THE
COURT OF APPEALS OF INDIANA

CALVIN DELONEY,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 21A01-0901-CV-11
	)	
INDIANA DEPARTMENT OF CORRECTION, INDIANA PAROLE BOARD, SUPERINTENDENT MIAMI CORRECTIONAL FACILITY, WENDY KNIGHT, STATE PAROLE AGENT JIM WILLIAMS, and OTHERS AS YET NAMED STATE EMPLOYEES,	)	
	)	
Appellees-Respondents.	)	

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel L. Pflum, Judge
Cause No. 21C01-0807-CT-233

September 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Calvin Deloney filed a 42 U.S.C. § 1983 complaint against various correctional authorities. Deloney claimed that his parole revocation proceedings violated his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. The trial court dismissed the cause pursuant to Indiana Trial Rule 12(B)(6). Because Deloney joined improper defendants, and because his parole revocation has not been reversed or declared invalid, we affirm.

Facts and Procedural History

In 1988 Deloney was convicted of criminal confinement and rape in Wayne County. He was sentenced and remanded to the Indiana Department of Correction. On September 24, 2004, Deloney was paroled from the Putnamville Correctional Facility.

The following May, State Parole Agent Curtis Mock submitted a report to the Indiana Parole Board recommending that Deloney's parole be revoked due to technical, noncriminal violations. The Parole Board issued a parole revocation arrest warrant. On September 17, 2005, Deloney was served with the warrant and taken into custody at Fayette County Jail.

Three days later State Parole Agent Jim Williams served Deloney with a Notice of Preliminary Hearing. Deloney claims that he refused to waive his right to a preliminary hearing and requested that one be scheduled. However, Deloney was soon transferred from Fayette County Jail to the Miami Correctional Facility to appear before the Indiana Parole Board. The Parole Board found that Deloney had waived his right to a preliminary hearing by signing a waiver form dated September 20, 2005. According to

Deloney, this form was falsified by a state parole agent. The Parole Board also found Deloney guilty of the parole violations. At some point thereafter Deloney was transferred to the Plainfield Correctional Facility.

Deloney filed this action pursuant to 42 U.S.C. § 1983 against the Indiana Department of Correction, the Indiana Parole Board, Superintendent Wendy Knight of the Plainfield Correctional Facility, Parole Agent Mock, and Parole Agent Williams. Deloney alleged that the defendants denied him due process and caused his unlawful detainment for approximately three and one-half years. Deloney sought both monetary damages and injunctive relief.

The trial court dismissed the complaint pursuant to Trial Rule 12(B)(6). The court found that Deloney could not state a valid false imprisonment claim because his parole revocation had not been set aside. Deloney now appeals.

Discussion and Decision

Deloney contends that the trial court erred in dismissing his complaint. A civil action may be dismissed under Indiana Trial Rule 12(B)(6) for "failure to state a claim upon which relief can be granted." A 12(B)(6) motion tests the legal sufficiency of the claim, not the facts supporting it. *Charter One Mortgage Corp. v. Condra*, 865 N.E.2d 602, 604 (Ind. 2007). Our review of a trial court's grant or denial of a 12(B)(6) motion is *de novo*. *Id.* When reviewing a motion to dismiss, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. *Id.* A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the

complaining party is not entitled to relief. *Reich v. Lincoln Hills Christian Church, Inc.*, 888 N.E.2d 239, 242 (Ind. Ct. App. 2008).

Deloney brought his claim pursuant to 42 U.S.C. § 1983. Section 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Rather than creating substantive rights, this statute provides civil remedies for deprivations of federal rights established elsewhere. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). A claim for relief under 42 U.S.C. § 1983 "need allege only that some person acting under color of state law has deprived the claimant of a federal right." *Matter of Tina T.*, 579 N.E.2d 48, 62 (Ind. 1991). To recover damages under the statute, a plaintiff must show that "1) he held a constitutionally protected right; 2) he was deprived of this right; 3) the defendants acted with reckless indifference to cause this deprivation; and 4) the defendants acted under the color of state law." *Long v. Durnil*, 697 N.E.2d 100, 105 (Ind. Ct. App. 1998) (citing *Culver-Union Twp. Ambulance Serv. v. Steindler*, 629 N.E.2d 1231, 1232-33 (Ind. 1994)), *trans. denied.*

I. The Department of Correction and Parole Board

The State first argues that the Indiana Department of Correction and Indiana Parole Board may not be sued under Section 1983. We agree.

"The defendant in a § 1983 action must be a 'person.'" 13D Charles Alan Wright et al., *Federal Practice and Procedure* § 3573.1 (3d ed. 2008). Five rules have emerged for determining whether an entity is a "person" within the purview of the statute: (1) a municipality, municipal official, local governmental unit or political subdivision may be sued for retrospective or prospective relief; (2) a state or state agency may not be sued under § 1983 regardless of the type of relief requested; (3) a state official cannot be sued in his official capacity for retrospective relief but can be sued for prospective relief; (4) a state official can be sued in his individual capacity for retrospective relief; and (5) an entity with Eleventh Amendment immunity in federal court is not considered a § 1983 "person" in state court. *City of Warsaw v. Orban*, 884 N.E.2d 262, 267-68 (Ind. Ct. App. 2007).

The Department of Correction and Parole Board are state agencies and thus under (2) above may not be joined in an action filed pursuant to Section 1983, regardless of the type of relief requested. The trial court properly dismissed Deloney's complaint with respect to these defendants.

II. Remaining Parties

The State further argues that Deloney's complaint must be dismissed against the remaining parties because it fails to establish that Deloney's parole revocation has been reversed or declared invalid. We agree.

The United States Supreme Court has held that

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal,

> expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when 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 the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnotes omitted); *see also Scruggs v. Allen County/City of Fort Wayne*, 829 N.E.2d 1049, 1051 (Ind. Ct. App. 2005) (holding that plaintiff's claim for false imprisonment was properly dismissed because plaintiff's conviction had not been overturned), *reh'g denied, trans. denied.* "[C]onditioning the right to bring a § 1983 action on a favorable result in state litigation or federal habeas serve[s] the practical objective of preserving limitations on the availability of habeas remedies." *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam). Although *Heck* only addressed claims for monetary damages, the Supreme Court has subsequently clarified that "a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

Here, Deloney has not alleged, indicated, or otherwise suggested that his parole revocation and sentence have been set aside. Moreover, Deloney claims that the parole

revocation proceedings violated his constitutional rights, so success in this action would necessarily demonstrate the invalidity of Deloney's parole revocation and incarceration. In accordance with the rule set forth in *Heck* and *Wilkinson*, Deloney's claim for false imprisonment is not cognizable under Section 1983.

For the reasons stated, the trial court did not err by dismissing Deloney's complaint for failure to state a claim upon which relief can be granted.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.