

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-2135

JOSEPH NEWTON,
Appellant

v.

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE; DAVE WITHERS;
JOSEPH GOBER;
ARTHUR AMATO, Sued individually and
in their official capacity

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 03-cv-00201)
District Judge: Honorable William W. Caldwell

Submitted Pursuant to 28 U.S.C. § 1915(e)(2)(B)
September 25, 2003
Before: SLOVITER, MCKEE AND SMITH, CIRCUIT JUDGES

(Filed November 12, 2003)

OPINION

PER CURIAM

Appellant, Joseph Newton, appeals the District Court's order dismissing his civil rights complaint filed pursuant to 42 U.S.C. §§ 1983, 1985 and 1986 for failure to state a

claim in accordance with 28 U.S.C. § 1915A(b)(1). Upon consideration of the record on appeal, we conclude that the District Court properly dismissed the complaint.

In February 2003, Newton filed suit against the Pennsylvania Board of Probation and Parole (Board), Hearing Examiner Dave Withers, Parole Supervisor Joseph Gober, and Parole Agent Arthur Amato. In his complaint, Newton alleges that he has been subjected to unlawful detention and wrongful imprisonment as a result of the defendants' actions in improperly revoking his parole. Newton includes in his complaint several claims based on Pennsylvania law, including allegations of abuse of process, malicious use of process, false arrest, false imprisonment, conspiracy to commit official oppression and the negligent infliction of emotional distress. Appellant sought monetary damages, as well as declaratory and injunctive relief.

The Magistrate Judge to whom Newton's complaint was referred issued a Report recommending, *inter alia*, that Newton's federal claims be dismissed for failure to state a claim insofar as appellant's challenge to his detention sounded in habeas and thus had to be pursued through the filing of a petition for writ of habeas corpus once state remedies had been exhausted, and because his claims for monetary and declaratory relief were not cognizable under Heck v. Humphrey, 512 U.S. 477 (1994). With respect to Newton's state law claims, the Magistrate Judge recommended that the court decline to exercise its supplemental jurisdiction and, instead, dismiss them without prejudice to appellant's right to assert them in state court. Over Newton's objections, the District Court adopted the

recommendations set forth in the Magistrate Judge's Report. This timely appeal followed.

Having reviewed the record on appeal, we find no error in the District Court's disposition of the claims asserted in Newton's complaint. In Preiser v. Rodriguez, 411 U.S. 475 (1973), the Supreme Court explained that when a prisoner challenges "the fact or duration of his confinement[] based ... upon the alleged unconstitutionality of state administrative action[,] [s]uch a challenge is just as close to the core of habeas corpus as an attack on the prisoner's conviction." Id. at 489. Thus, insofar as Newton challenged the actions of the Board in revoking his parole and requested injunctive relief in the form of release from confinement, the District Court was correct to conclude that habeas corpus was his sole federal remedy. Id. at 500. Moreover, because the District Court determined that Newton had yet to pursue state remedies with respect to the Parole Board's revocation decision (a determination with which we agree), we cannot fault the District Court for failing to construe appellant's complaint as a petition for writ of habeas corpus since such a petition would have ultimately been subject to dismissal on exhaustion grounds.

We likewise agree with the District Court's determination that Newton's claims seeking declaratory and monetary relief for an allegedly unconstitutional term of imprisonment are not cognizable under Heck unless and until appellant establishes that the Parole Board's revocation decision has been reversed on appeal, expunged, or called

into question by the issuance of a writ of habeas corpus by a federal court. From a reading of Newton's complaint, it is clear that the nature of his allegations are such that, if proven, they would necessarily imply the invalidity of the decision to revoke his parole. See Edwards v. Balisok, 520 U.S. 641, 648 (1997).

Accordingly, because we find that the appeal presents no arguable issues of fact or law, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B). Neitzke v. Williams, 490 U.S. 319 (1989).