

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-3230

JOHNNY LOPEZ,

Appellant

v.

U.S. DEPARTMENT OF JUSTICE; PETER T. DALLEO

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civ. No. 06-cv-00190)
District Judge: Honorable Gregory M. Sleet

Submitted for Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Under Third Circuit L.A.R. 27.4 and I.O.P. 10.6
September 27, 2007

Before: BARRY, AMBRO and FISHER, CIRCUIT JUDGES

(Filed: October 15, 2007)

OPINION

PER CURIAM

This is an appeal from the District Court's dismissal of Johnny Lopez's complaint and his subsequent motion for relief from judgment. For the following reasons, we will dismiss this appeal. See 28 U.S.C. § 1915(e)(2)(B)(i).

On March 21, 2006, Appellant, an inmate at Delaware Correctional Center, filed a civil rights action pursuant to 42 U.S.C. § 1983. Appellant alleges that Peter T. Dalleo, Clerk of Court for the U.S. District Court of Delaware, improperly sent Appellant's previous civil actions for dismissal. Specifically, Appellant claims that Dalleo sent his February 2002 civil rights complaint¹ to the court for dismissal even though the defendant in that case, Warden Raphael Williams, "never responded or sent any motions to dismiss." Appellant also alleges that Dalleo sent his September 2003 suit against the State of Delaware² for dismissal before the State of Delaware responded to his claims. In the complaint Appellant makes no specific allegations against the U.S. Department of Justice ("DOJ") except to demand that it pay him ten million dollars in damages. On June 19, 2007, the District Court entered an order dismissing Appellant's complaint without prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Appellant filed a timely notice of appeal from that order.

We review de novo the District Court's dismissal of a complaint under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(b). See McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004).

¹Lopez v. Williams, Civ. Action No. 02-120-GMS (D. Del. Mar. 29, 2004).

²Lopez v. Delaware, Civ. Action No. 03-936-GMS (D. Del. June 16, 2004).

Section 1983 creates a remedy to redress a deprivation of a federally protected right by a person acting under color of state law. Harvey v. Plains Twp. Police Dep't, 421 F.3d 185, 189 (3d Cir. 2005). The DOJ is a federal agency, and Dalleo, clerk for a federal district court, is a federal employee. Section 1983 is inapplicable to persons acting under color of federal law. See Bivens v. Six Unknown Named Agents, 403 U.S. 388, 389 n.1 (1971) (Harlan, J., concurring). Therefore, section 1983 does not apply to Appellant's claims. Moreover, Appellant's claim against the DOJ would fail even if he had filed his claims under Bivens, which governs civil rights claims against federal defendants. The DOJ is a federal agency and the Supreme Court has held that federal agencies are not appropriate defendants for Bivens actions. See Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 486 (1994).

Finally, Appellant's complaints against Dalleo are without legal merit. Appellant claims that Dalleo sent his cases for dismissal without "starting" the case. Dalleo's actions in both of Appellant's cases were part of a screening process required by statute. See 28 U.S.C. 1915A(b); Ray v. Kertes, 285 F.3d 287, 296 n.11 (3d Cir. 2002) (noting that sections 1915A(a)-(b) direct dismissal before docketing under certain circumstances). Appellant also claims that Dalleo never sent him notice that his two motions "to start the case" in Lopez v. Williams were denied. The District Court docket, however, clearly indicates that Appellant was sent notice of the denials on March 29, 2004. Thus, Appellant has failed to allege deprivation of an interest protected by the Constitution.

In sum, because Lopez’s appeal lacks arguable legal merit, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).