IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-GPG

CHAYCE AARON ANDERSON,

Plaintiff,

v.

CARA BOXBERGER (in their individual capacity only),
JASON SHUTTERS (in their individual capacity only), and
MARK DELANO (in their individual capacity only),

Defendants.

ORDER TO DISMISS IN PART AND TO DRAW CASE

Plaintiff, Chayce Aaron Anderson, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Anderson initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) pursuant to 42 U.S.C. § 1983. On April 13, 2017, Magistrate Judge Gordon P. Gallagher ordered Mr. Anderson to file an amended complaint that is legible and that clarifies the claims he is asserting. On May 10, 2017, Mr. Anderson filed an Amended Prisoner Complaint (ECF No. 9).

The Court must construe the Amended Prisoner Complaint liberally because Mr. Anderson is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). If the Amended Prisoner Complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, [the Court] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence

construction, or his unfamiliarity with pleading requirements." *Hall*, 935 F.2d at 1110. However, the Court should not be an advocate for a *pro se* litigant. *See id*.

Pursuant to 28 U.S.C. § 1915A(a), the Court must review the Amended Prisoner Complaint because Mr. Anderson is a prisoner and he is seeking redress from an officer or employee of a governmental entity. Pursuant to § 1915A(b), the Court is required to dismiss the Amended Prisoner Complaint, or any portion of the Amended Prisoner Complaint, that is legally frivolous or seeks monetary relief from a defendant who is immune from such relief. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *See Neitzke v. Williams*, 490 U.S. 319, 324 (1989). For the reasons stated below, the Court will dismiss the Amended Prisoner Complaint in part.

Mr. Anderson's claims stem primarily from his prosecution and conviction in Larimer County District Court case number 15CR1466. Mr. Anderson alleges he was falsely convicted by a jury on one count of sexual assault on a helpless victim and acquitted of burglary. He further alleges he was sentenced on February 3, 2017, and that he appealed to the Colorado Court of Appeals in March 2017. Defendant Cara Boxberger is the Larimer County deputy district attorney who prosecuted case number 15CR1466. Defendant Jason Shutters is a police officer who investigated the case and testified against Mr. Anderson. Defendant Mark Delano is a jailhouse informant who testified against Mr. Anderson in exchange for a reduced sentence. Mr. Anderson is suing each Defendant in his or her individual capacity.

Mr. Anderson asserts six claims for relief, each of which has multiple subparts.

He first claims his Sixth Amendment rights were violated because Ms. Boxberger and Officer Shutters encouraged and assisted Mr. Delano in providing false testimony at Mr. Anderson's trial about a jailhouse confession (claim 1(a)) and he was denied counsel when he allegedly made the jailhouse confession (claim 1(b)). He contends in the first subpart of his second claim that Officer Shutters violated his Fourth Amendment rights by: refusing to inform Mr. Anderson about the nature or cause of the investigation in August 2015 (claim 2(a)(i)), denying counsel (claim 2(a)(ii)), and using excessive force (claim 2(a)(iii)). Mr. Anderson further contends in his second claim that Officer Shutters violated his Fourth Amendment rights by allowing a rape kit examination to be performed on Mr. Anderson at the Poudre Valley Hospital in the presence of an unauthorized nurse (claim 2(b)); using entrapment by questioning Mr. Anderson about a traffic accident (claim 2(c)); and making false statements in an affidavit and providing false testimony at hearings and trial (claim 2(d)). In his third claim Mr. Anderson contends that Ms. Boxberger and Officer Shutters violated a confidentiality provision in the Federal Juvenile Delinquency Act as well as his constitutional right to confidentiality by disclosing sealed juvenile records (claim 3(a)); that Ms. Boxberger and Officer Shutters made statements at court hearings and exposed confidential information that defamed Mr. Anderson and violated due process (claim 3(b)); and that Ms. Boxberger made statements at court hearings that slandered Mr. Anderson (claim 3(c)). Mr. Anderson contends in his fourth claim that Ms. Boxberger and Officer Shutters violated his constitutional rights by providing false testimony and failing to present exculpatory evidence (claim 4(a)) and by withholding, concealing, or destroying exculpatory evidence (claim 4(b)). In his fifth

claim Mr. Anderson contends that Ms. Boxberger and Officer Shutters violated his constitutional rights by malicious prosecutorial overcharging (claim 5(a)), the absence of a lawful plea offer (claim 5(b)), and malicious prosecution/abuse of discretion in presenting false evidence and withholding exculpatory evidence (claim 5(c)). Finally, Mr. Anderson contends in his sixth claim that Ms. Boxberger violated his constitutional rights by subjecting him to malicious prosecutorial misconduct (claim 6(a)) and orchestrated perjury (claim 6(b)).

In addition to seeking damages as relief, Mr. Anderson makes a brief reference to injunctive relief or a temporary restraining order to prevent future wrongs. However, a "plaintiff cannot maintain a declaratory or injunctive action unless he or she can demonstrate a good chance of being likewise injured in the future." *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991). Mr. Anderson fails to allege facts that demonstrate a good chance he will face the same or similar injuries as those alleged in the amended complaint. As a result, he fails to demonstrate that entry of injunctive relief or a temporary restraining order will have any effect on Defendants' behavior towards him. *See Green v. Branson*, 108 F.3d 1296, 1300 (10th Cir. 1997). Thus, the claims for injunctive relief or a temporary restraining order are legally frivolous and must be dismissed.

Many of Mr. Anderson's claims for damages also must be dismissed. To the extent the claims for damages implicate the validity of Mr. Anderson's conviction, the claims are barred by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994). Pursuant to *Heck*, if a judgment necessarily would imply the invalidity of a criminal conviction or

sentence, the action does not arise until the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by the issuance of a federal habeas writ. *See Heck*, 512 U.S. at 486-87. In short, a civil rights 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).

The Court finds that claims 1(a), 1(b), 2(c), 2(d), 4(a), 4(b), 5(a), 5(b), 5(c), 6(a), and 6(b) necessarily imply the invalidity of Mr. Anderson's conviction and are barred by *Heck*. Although Mr. Anderson resists this conclusion, the Court is not persuaded. It is clear that claims of malicious prosecution implicate the validity of a conviction. *See Heck*, 512 U.S. at 484-86. Similarly, claims regarding denial of a fair trial, perjured testimony, withholding exculpatory evidence, and prosecutorial misconduct also implicate the validity of a conviction and are barred by *Heck*. *See Glaser v. City and Cty. of Denver*, 557 F. App'x 689, 701 (10th Cir. 2014) (claims regarding denial of fair trial, perjured testimony, and withholding of exculpatory evidence implicate validity of conviction); *Baldwin v. O'Connor*, 466 F. App'x 717, 717 (10th Cir. 2012) (claim alleging prosecutorial misconduct implicates validity of conviction). Finally, although Fourth Amendment claims do not necessarily imply the invalidity of a criminal conviction, such claims are barred by *Heck* in the absence of actual, compensable injury beyond the injury of being convicted. *See Heck*, 512 U.S. at 487 n.7; *see also Baldwin*, 466 F. App'x at

717-18 (affirming dismissal under *Heck* of Fourth Amendment search and seizure claim because the plaintiff failed to allege any injury other than his conviction).

It is apparent that Mr. Anderson has not invalidated the validity of the challenged conviction. Therefore, claims 1(a), 1(b), 2(c), 2(d), 4(a), 4(b), 5(a), 5(b), 5(c), 6(a), and 6(b) are barred by the rule in *Heck* and must be dismissed. The dismissal of the claims barred by *Heck* will be without prejudice. *See Fottler v. United States*, 73 F.3d 1064, 1065 (10th Cir. 1996).

The Court next will address claims 2(a) and 2(b). As noted above, Mr. Anderson contends in claim 2(a) that Officer Shutters violated his Fourth Amendment rights by: (i) refusing to inform him about the nature or cause of the investigation during questioning in August 2015, (ii) denying counsel during the questioning, and (iii) using excessive force in applying handcuffs. Mr. Anderson contends in claim 2(b) that Officer Shutters violated his Fourth Amendment rights by allowing a rape kit examination to be performed on Mr. Anderson at the Poudre Valley Hospital in the presence of an unauthorized nurse. He specifically alleges the following in support of claims 2(a) and 2(b):

> Defendant Shutters knowingly and intentionally caused the following sequence of events in connection to the way he apprehended the plainti[ff] at approximately 10:30 p.m. on the evening of August 29th, 2015:
>
> 1. Shutters never read plainti[ff]'s Miranda rights.
>
> 2. Shutters never informed plainti[ff] of cause or nature of accusations.
>
> 3. Shutters stated, "I have questions about 'another case.'"
>
> 4. Shutters never informed plainti[ff] "what case," or even disclosed the fact that he was investigating an alleged sexual assault.

5. Shutters used excessive force in applying handcuffs.

6. Shutters intentionally caused nerve damage by not locking handcuffs, and overcranking handcuffs.

7. Shutters directly caused swelling in wrists that resulted in excruciating physical pain to the plainti[ff] daily, or on a continuing basis.

8. Shutters left plainti[ff] alone in an interrogation room in a shaken condition having trouble staying conscious and breathing for nearly 1-2 hours.

9. Shutters inhibited proper photographing of wounds for multiple hours.

10. Shutters inhibited proper medical care by denying originally [sic] access to E.M.T.'s into police station.

11. Shutters attempted to interrogate plaintiff from behind while plainti[ff] was strapped to stretcher within an emergency ambulance.

12. Shutters prevented and inhibited proper medical attention in the E.R., and convinced the doctor to deny subsequent medical attention.

13. Shutters instructed assistant detective Neil to perform a "rape kit" on plainti[ff], allowed a male nurse to stand in and watch the plainti[ff] to be stripped naked and photographed.

14. Assistant Detective Neil's participation was PASSIVE, since he was instructed by a superior investigator, Corporal Shutters.

15. Shutters['] participation was ACTIVE, and he individually caused injuries to the plainti[ff], and he personally allowed the plainti[ff] to be physically humili[ated] by instructing Neil to strip the plainti[ff] and photograph him naked in front of a member of the general public, an E.R. nurse, and also a homosexual. Shutters allowed [the] nurse to watch plainti[ff]'s rape kit. The plainti[ff] contends the E.R. nurse's participation was involuntary, or PASSIVE, due to being allowed in room by Shutters. This has permanently scarred plainti[ff] for life.

16. The Poudre Valley Hospital's policy involves "sit-in" nurses, at

least in the E.R.

(ECF No. 9 at 16-17.)

These factual allegations do not support arguable constitutional claims with respect to Mr. Anderson's assertions that Officer Shutters refused to inform him about the nature or cause of the investigation during questioning in August 2015 (claim 2(a)(i)) or denied counsel during the questioning (claim 2(a)(ii)). Therefore, those claims will be dismissed as legally frivolous. The Court will not address at this time the merits of claim 2(a)(iii), in which Mr. Anderson contends Officer Shutters used excessive force. The Court also will not address at this time the merits of claim 2(b), in which Mr. Anderson contends Officer Shutters allowed a rape kit examination to be performed in the presence of an unauthorized nurse.

The Court next will address claim 3. Mr. Anderson primarily contends in claim 3(a) that Ms. Boxberger and Officer Shutters violated a confidentiality provision in the Federal Juvenile Delinquency Act found in 18 U.S.C. § 5038 by disclosing sealed juvenile records. Although Mr. Anderson also makes a vague and conclusory reference to a constitutional right to confidentiality, he does not allege specific facts that support an arguable constitutional violation with respect to claim 3(a). Therefore, to the extent claim 3(a) is premised on an alleged constitutional violation, the claim is legally frivolous and must be dismissed.

The contention that disclosure of Mr. Anderson's juvenile criminal history violated 18 U.S.C. § 5038 also lacks merit. That statute provides in relevant part that "[t]hroughout and upon the completion of the juvenile delinquency proceeding, the

[juvenile records] shall be safeguarded from disclosure to unauthorized persons." 18 U.S.C. § 5038(a). Mr. Anderson does not allege he was the subject of any federal juvenile delinquency proceedings to which that statute applies. Furthermore, he fails to demonstrate the existence of a private right of action for damages under § 5038. *See, e.g., Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (dismissal of claims alleging violations of criminal statutes proper if criminal statutes do not provide for a private right of action). Therefore, to the extent claim 3(a) is premised on an alleged violation of § 5038, the claim also will be dismissed as legally frivolous.

Mr. Anderson contends in claim 3(b) that Ms. Boxberger and Officer Shutters made statements at court hearings and exposed confidential information that defamed Mr. Anderson and violated due process. Mr. Anderson specifically alleges that Ms. Boxberger falsely depicted him as someone who is unable to keep a job and was previously convicted of a felony sexual offense. He alleges that Officer Shutters shared confidential information regarding one of Mr. Anderson's juvenile cases to unauthorized persons.

To the extent claim 3(b) is asserted against Ms. Boxberger, the claim is barred by absolute prosecutorial immunity. "[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of [her] role as an advocate for the State, are entitled to the protections of absolute immunity." *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). The Court applies a functional test to determine if absolute immunity is appropriate because immunity "is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." *Forrester*

v. White, 484 U.S. 219, 227 (1988). The determinative factor in this functional approach "is 'advocacy' because that is the prosecutor's main function and the one most akin to [her] quasi-judicial role." *Rex v. Teeples*, 753 F.2d 840, 843 (10th Cir. 1985). Thus, absolute prosecutorial immunity encompasses claims that the prosecutor "knowingly used false testimony and suppressed material evidence." *Imbler v. Pachtman*, 424 U.S. 409, 413 (1976). "Whether the claim involves withholding evidence, failing to correct a misconception or instructing a witness to testify evasively, absolute immunity from civil damages is the rule for prosecutors." *Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1373 n.4 (10th Cir. 1991). The portion of claim 3(b) that is asserted against Ms. Boxberger is barred by absolute prosecutorial immunity because the facts alleged by Mr. Anderson demonstrate that Ms. Boxberger was acting in her role as an advocate for the State.

Mr. Anderson's allegation in claim 3(b) that Officer Shutters defamed his good reputation in violation of due process by exposing confidential information also does not support a cognizable claim. It is clear that defamation, by itself, is not actionable in a § 1983 claim. *See Siegert v. Gilley*, 500 U.S. 226, 233 (1991); *Angel v. Torrance Cty. Sheriff's Dep't*, 183 F. App'x 707, 708 (10th Cir. 2006). Therefore, the portion of claim 3(b) that is asserted against Officer Shutters also is legally frivolous and must be dismissed.

Finally, Mr. Anderson contends in claim 3(c) that Ms. Boxberger made statements at court hearings that slandered Mr. Anderson. The Court finds that claim 3(c) must be dismissed based on absolute prosecutorial immunity for the same reasons discussed

above in connection with claim 3(b).

As noted above, the Court will not address at this time the merits of claims 2(a)(iii) and 2(b). Instead, the case will be drawn to a presiding judge and, if applicable, to a magistrate judge. *See* D.C.COLO.LCivR 8.1(c). Because claims 2(a)(iii) and 2(b) are asserted only against Officer Shutters, the other Defendants will be dismissed as parties to this action. Accordingly, it is

ORDERED that the claims for injunctive relief and a temporary restraining order as well as claims 2(a)(i), 2(a)(ii), 3(a), 3(b), and 3(c) are dismissed pursuant to 28 U.S.C. § 1915A(b). It is

FURTHER ORDERED that claims 1(a), 1(b), 2(c), 2(d), 4(a), 4(b), 5(a), 5(b), 5(c), 6(a), and 6(b) are dismissed without prejudice as barred by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994). It is

FURTHER ORDERED that Defendants Cara Boxberger and Mark Delano are dismissed as parties to this action. It is

FURTHER ORDERED that this case shall be drawn to a presiding judge and, if applicable, to a magistrate judge.

DATED at Denver, Colorado, this 6th day of July, 2017.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court