

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN GARRETT SMITH,

Plaintiff,

v.

SCOTT COLLIER,

Defendant.

SIMON, District Judge.

Plaintiff, an inmate at the Stafford Creek Corrections Center, brings this civil action pursuant seeking damages from a state-court judge. In a separate order, the court has granted plaintiff leave to proceed *in forma pauperis*. However, for the reasons set forth below, plaintiff's Complaint is summarily dismissed. See 28 U.S.C. § 1915(e)(2).

///

///

BACKGROUND

Plaintiff alleges that Judge Collier illegally adjudicated an obviously fraudulent case against him before ultimately recusing himself. He asserts that there was a "total absence of felony jurisdiction" which amounted to an act of treason against the United States. Plaintiff asks the court to void his criminal judgment award him money damages totaling more than \$44,000,000. He also asks the court to sentence Judge Collier, whom he describes as a "hostile domestic enemy," to not less than five years in prison.

STANDARDS

Pursuant to 28 U.S.C. § 1915A(a), the court is required to screen prisoner complaints seeking relief against a governmental entity, officer, or employee and must dismiss a complaint if the action is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). In order to state a claim, plaintiff's complaint must contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that defendants violated plaintiff's constitutional rights. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007). "Threadbare recitals of the elements of a cause

of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S.Ct. at 1949.

Dismissal for failure to state a claim is proper if it appears beyond doubt that plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Ortez v. Washington County*, 88 F.3d 804, 806 (9th Cir. 1996); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Because plaintiff is proceeding *pro se*, the court construes his pleadings liberally and affords him the benefit of any doubt. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Ortez*, 88 F.3d at 806.

DISCUSSION

This case is the second of six cases plaintiff recently filed with the court that improperly challenge the validity of a prior criminal conviction. This case is essentially duplicative of *Smith v. Lewis*, 3:17-cv-010017-SI, wherein plaintiff claimed that another state-court judge committed treason for presiding over his state criminal action in Clark County, Washington. The court previously determined that action was frivolous, and similarly concludes that this case is frivolous, and amounts to malicious litigation as part of a pattern of filing many frivolous cases against different defendants involving the same

basic premise. The court therefore summarily dismisses this action with prejudice.¹

CONCLUSION

Based on the foregoing, IT IS ORDERED that plaintiff's Complaint (#1) is DISMISSED because it is frivolous and malicious. The dismissal is without leave to amend, and with prejudice as to this cause of action involving this defendant. This dismissal shall constitute a "strike" for purposes of the Prison Litigation Reform Act. Additionally, this court certifies that any appeal from this order would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A).

IT IS SO ORDERED.

DATED this 1st day of September, 2017.



Michael H. Simon
United States District Judge

¹ Nothing in this Order prevents plaintiff from filing a federal habeas corpus petition once he has exhausted his state court remedies, or from seeking damages from a proper defendant should he successfully invalidate his conviction in the future.