

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PAUL KAMIENSKI

Plaintiff,

v.

ATTORNEY GENERAL FOR THE STATE
OF NEW JERSEY, MARLENE LYNCH
FORD, THOMAS F. KELAHER, JAMES W.
HOLZAPFEL, RONALD DELIGNY, JOHN
MERCUN, SAMUEL J. MARZARELLA, E.
DAVID MILLARD, JAMES A.
CHURCHILL, DANIEL MAHONEY,
JEFFREY P. THOMPSON, OCEAN
COUNTY PROSECUTOR'S OFFICE, and
COUNTY OF OCEAN

Defendants.

Civil Action No. 11-3056 (PGS)

MEMORANDUM & ORDER

SHERIDAN, U.S.D.J.

This matter is before the court on a motion to dismiss Counts 13 and the 14 of the Complaint (ECF No. 28). Plaintiff seeks injunctive relief against the Attorney General of the State of New Jersey and the Ocean County Prosecutor's Office.

Counts 13 and 14 of the Complaint sets forth Plaintiff's claims for injunctive relief. The pertinent paragraphs read:

Defendant Attorney General for the State of New Jersey is sued solely in her official capacity and only for injunctive relief, as permitted by Ex Parte Young, 209 U.S. 123 (1908).

COUNT XIII
INJUNCTIVE RELIEF AS TO PLAINTIFF

132. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

133. Pursuant to the prior order of the United States District Court in the federal habeas proceedings, Plaintiff seeks an order directing Defendants to expunge the Murder Convictions from his criminal history records.

COUNT XIV
INJUNCTIVE RELIEF GENERALLY

134. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

135. Pursuant to 42 U.S.C. § 1983 and the Constitution of the State of New Jersey, Plaintiff seeks an injunction requiring the Ocean County Prosecutor's Office to establish policies, customs and practices designed to prevent, minimize and correct the civil rights violations alleged in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

F. That the Court order Defendants to expunge the Murder Convictions from Plaintiff's criminal record;

G. That the Court enjoin Defendants from committing similar violations of civil rights in the future;

With regard to the expungement of the murder convictions, Count 13 is dismissed for the following reasons. First there is a statutory process that must be followed to expunge a criminal record. N.J.S.A.2C:52-1. This is a matter upon which Plaintiff can personally proceed.

Second, at oral argument the Attorney General's Office indicated that it would informally assist Plaintiff in the expungement process. As such, there is no need for ordering this relief.

Third, there is no ongoing violation of federal law and there is no showing that the Attorney General is waiving the Eleventh Amendment defense.

With regard to the prayer for relief to “enjoin[ing] defendants (Ocean County) from committing similar violations of his civil rights “in the future”, this is also dismissed. The allegations are vague, speculative and do not provide a clear and plain statement of the relief sought. Fed. R. Civ. P. 8. In addition, the Plaintiff does not show any imminent harm, especially since his conviction for murder has been reversed, he will not be subject to any further punishment.

IT IS on this 13th day of September, 2012;

ORDERED that the motion to dismiss (ECF No. 28) is granted as to Counts 13 and 14 of the Complaint.



PETER G. SHERIDAN, U.S.D.J.