

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

PAUL C. PERKINS	:	
Plaintiff	:	
v.	:	99-00,512
	:	
LESLIE CAPUTO,	:	
Defendant	:	

OPINION and ORDER

The plaintiff, Paul Perkins, has filed a Petition to Proceed in Forma Pauperis along with a complaint alleging that the defendant, Leslie Caputo, testified falsely against him at his criminal trial. He requests damages, claiming that Ms. Caputo harmed him by depriving him of a fair trial and violating his constitutional right to be free from false testimony in a criminal court proceeding.

Mr. Perkins' complaint is an excellent candidate for the procedure provided by Rule 240(g) of the Rules of Civil Procedure, which states:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Courts are given this authority so that they can prevent the judicial system from being overwhelmed by meritless in forma pauperis complaints. Neitzke v. Williams, 490 U.S. 319, 326, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338, 347 (1990).

A frivolous action is one which "lacks an arguable basis either in law or in fact." Neitzke, *supra* at 319. Mr. Perkins' complaint is frivolous because it fails to state a cause of action under Pennsylvania law. While one has a constitutional right to a fair trial, there is

no constitutional right to a trial free from false testimony. If Mr. Perkins believes he was denied a fair trial, his remedy is an appeal to the Pennsylvania appellate courts. If he believes Ms. Caputo committed perjury, false swearing, obstruction of justice, and tampering with evidence, his remedy is to file a private criminal complaint and submit it to the District Attorney for approval and prosecution.

However, this court knows of no civil cause of action that can be based upon the facts alleged in this complaint. The state and federal constitutions serve primarily to protect individuals from state action—not actions committed by private individuals. Therefore, he cannot sue Ms. Caputo for depriving him of a fair trial.

For these reasons, the court enters the following order:

ORDER

AND NOW, this _____ day of April, 1999, the Petition to Proceed in Forma Pauperis filed by the plaintiff is denied and the complaint is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Hon. Clinton W. Smith
Paul C. Perkins
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