BLD-026 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2429

ANTWAN L. RICHARDSON,
Appellant

v.

JOSEPH F. HARTYE; BRADLEY A. WINNICK; JOHN R. CANAVAN; DAUPHIN COUNTY PUBLIC DEFENDERS OFFICE; DAUPHIN COUNTY DISTRICT ATTORNEYS OFFICE; JUDGE DEBORAH E. CURCILLO; FRANCIS T. CHARDO

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1-19-cv-02132)
District Judge: Honorable Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
November 10, 2021

Before: MCKEE, GREENAWAY, JR., and PORTER, Circuit Judges

(Opinion filed: December 1, 2021)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Antwan Richardson, an inmate proceeding pro se and in forma pauperis, appeals from the District Court's dismissal of his civil rights complaint. For the reasons that follow, we will summarily affirm the District Court's judgment.

I.

In December 2019, Richardson filed a complaint against numerous defendants involved in his state court criminal proceedings, including his public defender, the district attorney, several police officers, and the trial judge. A United States Magistrate Judge screened Richardson's complaint pursuant to 28 U.S.C. § 1915(e), dismissed the complaint for failure to state a claim, and granted Richardson leave to file an amended complaint. Richardson then filed an amended complaint, omitting the police officer defendants. Neither complaint identified a precise cause of action but the Magistrate Judge liberally construed Richardson to have alleged 42 U.S.C. § 1983 claims stemming from his criminal prosecution and conviction. Specifically, Richardson alleged constitutional violations based on claims of 1) malicious prosecution; 2) an improper competency evaluation; 3) improper delay in being brought to trial; 4) selective prosecution; and 5) ineffective assistance of counsel. Richardson seeks damages and equitable relief.

The Magistrate Judge screened the amended complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and recommended dismissal of the complaint without further leave to amend. The District Court adopted the Magistrate Judge's report over Richardson's objections and dismissed the amended complaint. Richardson appealed.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's sua sponte dismissal of Richardson's claims under § 1915(e)(2). See Dooley v. Wetzel, 957 F.3d 366, 373 (3d Cir. 2020). To avoid dismissal for failure to state a claim, a civil complaint must set out "sufficient factual matter" to show that its claims are facially plausible. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Construing Richardson's complaint liberally, see Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), we accept all factual allegations in the complaint as true and view those facts in the light most favorable to Richardson, Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012). We may summarily affirm if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

III.

We agree with the District Court's dismissal of Richardson's claims for substantially the reasons stated in the Magistrate Judge's Report and Recommendation. First, Richardson's claims against Judge Curcillo are barred by absolute immunity. See Stump v. Sparkman, 435 U.S. 349, 355-57 (1978) (explaining that judges are not civilly liable for judicial acts); Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam) ("A judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts."). Although Richardson disagreed with Judge Curcillo's decisions concerning the timeliness of his trial and his competency evaluation,

he did not allege that the judge acted in the absence of jurisdiction. See Figueroa v. Blackburn, 208 F.3d 435, 443-44 (3d Cir. 2000) (explaining that "[a] judge will not be deprived of immunity because the action he took is in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction"). Because there is no question that Judge Curcillo acted within his jurisdiction, Richardson's claims are barred. See id. ("[g]enerally, . . . where a court has some subject matter jurisdiction, there is sufficient jurisdiction for immunity purposes") (citations and internal quotation marks omitted). Additionally, the Magistrate Judge correctly concluded that Richadson's claim against Judge Curcillo for injunctive relief was also barred. See Azubuko, 443 F.3d at 303-04 (injunctive relief against a judicial officer not available under § 1983 unless a declaratory decree was violated or declaratory relief is unavailable).

Next, Richardson's claims against prosecutors Canavan, Chardo, and the Dauphin County District Attorney's Office are also barred by absolute immunity. See Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993) ("[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity."). Richardson's allegations indicate that both prosecutors acted entirely within the scope of their respective positions as they sought to bring him to trial and participated in the competency evaluation process. See Van de Kamp v. Goldstein, 555 U.S. 335, 343-44 (2009) (applying absolute immunity where the prosecutor's administrative obligation was

"directly connected with the conduct of a trial"); see also Williams v. Consovoy, 453 F.3d 173, 178 (3d Cir. 2006) (competency evaluation is "function integral to the judicial process").

Richardson's claim of malicious prosecution also fails. To prove a malicious prosecution claim under § 1983, a plaintiff must meet a number of elements, including that the "criminal proceeding ended in his favor." Allen v. N.J. State Police, 974 F.3d 497, 502 (3d Cir. 2020). As this Court has explained, favorable termination requires a showing that a conviction has been "disposed of in a way that indicates the innocence of the accused." Kossler v. Crisanti, 564 F.3d 181, 187 (3d Cir. 2009). Because Richardson's conviction has not been overturned or otherwise favorably terminated, he cannot allege the elements required for malicious prosecution.

Richardson also alleges that the prosecution violated his right to equal protection by prosecuting him for kidnapping while declining to prosecute the person he kidnapped. The Magistrate Judge correctly interpreted Richardson's claim as an allegation of selective prosecution, a form of discriminatory law enforcement that violates the Equal Protection Clause of the Fourteenth Amendment. See Yick Wo v. Hopkins, 118 U.S. 356 (1886). Two factors must be proved: first, that persons similarly situated were not prosecuted; second, "that the decision to prosecute was made based on an unjustifiable standard, such as race, religion or some other arbitrary factor." United States v. Schoolcraft, 879 F.2d 64, 68 (3d Cir. 1989) (per curiam). As explained by the Magistrate

Judge, Richardson has failed to allege the basis for either factor and therefore has failed to state a claim of selective prosecution.

Additionally, Richardson's claims against defense counsel, including Hartye, Winnick, and the Dauphin County Public Defender's Office, fail under § 1983 because the defendants are not state actors. Public defenders do not act under color of state law for purposes of § 1983 when they "perform[] a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." See Polk County v. Dodson, 454 U.S. 312, 325 (1981). Although defense attorneys may act "under color of" state law when they conspire with state officials to deprive a person of his or her federal rights, see Tower v. Glover, 467 U.S. 914, 923 (1984), a plaintiff pleading unconstitutional conspiracy "must assert facts from which a conspiratorial agreement can be inferred," Great W. Mining & Min. Co. v. Fox Rothschild LLP, 615 F.3d 159, 178 (3d Cir. 2010). Richardson's bare assertion that defense counsel conspired with the prosecution concerning his competency evaluation failed to plausibly allege any conspiracy.

Finally, considering the foregoing, the District Court did not abuse its discretion or otherwise err in dismissing the complaint without leave to amend after determining that further amendment would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

Because this appeal does not present a substantial question, we will affirm the judgment of the District Court. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.[1]

[1] Richardson's motion for appointment of counsel is denied in light of our disposition. See Tabron v. Grace, 6 F.3d 147, 155-56 (3d Cir. 1993).