

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

GEMARI COTTON,

Plaintiff,

v.

CAUSE NO.: 3:19-CV-714-JD-MGG

CURTIS HILL, MICHAEL DVORAK, and  
KENNETH P. COTTER,

Defendants.

OPINION AND ORDER

Gemari Cotton, a prisoner without a lawyer, filed a complaint alleging he was a juvenile when he was charged as an adult in the St. Joseph Superior Court. “A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Cotton states he was born on March 9, 1995. He states he was 17 years 281 days old when he was charged as an adult in the St. Joseph Superior Court. Based on these dates, Cotton alleges he was charged as an adult on December 14, 2012. He is suing three defendants. Kenneth P. Cotter was the deputy prosecuting attorney in his criminal

case: *State v. Cotton*, 71D08-1301-MR-3 (St. Joseph Superior Court filed January 16, 2013). <https://public.courts.in.gov/mycase/#/vw/CaseSummary/eyJ2Ijpb7IkNhC2VUb2tlbiI6IlpEQTFOVEV3T1RFd01Ua3dPakExT0RRME9ESXhNRFk9In19>. Michael Dvorak was the elected St. Joseph County Prosecutor at the time Cotton was charged. Curtis Hill is the current Indiana Attorney General. <https://www.in.gov/attorneygeneral/2354.htm>. Hill first took office on November 9, 2017. *Id.* At the time Cotton was charged as an adult, Curtis Hill was the elected Elkhart County Prosecutor. *Id.*

Curtis Hill is not alleged to have had any involvement with the decision to prosecute Cotton as an adult. “[P]ublic employees are responsible for their own misdeeds but not for anyone else’s.” *Burks v. Raemisch*, 555 F.3d 592, 596 (7th Cir. 2009). “Only persons who cause or participate in the violations are responsible.” *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). Because Curtis Hill is not alleged to have had any personal involvement with the decision to charge Cotton as an adult, the claims against him must be dismissed.

Kenneth P. Cotter and Michael Dvorak were prosecutors when they are alleged to have charged Cotton as an adult. “[I]n initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under § 1983.” *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). Absolute immunity shields prosecutors even if they act maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence. *Smith v. Power*, 346 F.3d 740, 742 (7th Cir. 2003). Therefore the claims against Cotter and Dvorak must also be dismissed.

