

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

KEITH MICHAEL LESSOR, #386922

PLAINTIFF

v.

CIVIL NO. 1:16-cv-165-HSO-RHW

JOEL SMITH

DEFENDANT

**MEMORANDUM OPINION AND ORDER
DISMISSING PLAINTIFF'S COMPLAINT**

This matter is before the Court, sua sponte, for consideration of dismissal.

Pro Se Plaintiff Keith Michael Lessor is incarcerated at the Harrison County Detention Center and brings this Complaint [1] pursuant to 42 U.S.C. § 1983. The named Defendant is Joel Smith, District Attorney for Harrison County, Mississippi. The Court, having liberally construed the pleadings in consideration with the applicable law, finds that this case should be dismissed.

I. BACKGROUND

Lessor states that on or about May 17, 2015, he was arrested and charged with the misdemeanor offense of cultivation of marijuana. Lessor complains that this charge was incorrectly treated as a felony because the section of the relevant state criminal statute dealing with cultivation is only a misdemeanor offense. Compl. [1] at 4. Lessor argues that after months of incarceration, on March 28, 2016, he was indicted for manufacture of a controlled substance, which is punishable as a felony. Lessor complains that the alteration of the charges was an “attempt to cover-up the gross incompetence [and] criminal behaviour [sic] of District Attorney Joel Smith.” *Id.* at 5. Lessor further complains that District

Attorney Smith violated discovery rules in an attempt to undermine Lessor's chances to defend himself. *Id.* Lessor requests dismissal of all criminal charges and "adequate comp[en]sation for the false imprisonment, harassment, pain and suffering, and mental anguish and duress." *Id.* at 4.

The Court previously severed Lessor's challenges to the validity and duration of his confinement and opened a separate habeas corpus case for his claims seeking release from incarceration. *See* Order [7] and *Lessor v. Smith*, No. 1:16-cv-276-LG-RHW (S.D. Miss. filed July 28, 2016). Thus, the only claims before the Court are Lessor's claims for § 1983 relief.

II. DISCUSSION

The *in forma pauperis* statute mandates dismissal "at any time" if the Court determines an action "fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915 (e)(2)(B)(ii-iii). Because Lessor is proceeding as a pauper, § 1915(e)(2) applies to this case.

District Attorney Smith, as a criminal prosecutor, enjoys absolute immunity from suit "for all actions 'intimately associated with the judicial phase of the criminal process.'" *Lampton v. Diaz*, 639 F.3d 223, 225 (5th Cir. 2011) (citing *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). Prosecutorial immunity extends to a "prosecutor's actions in initiating, investigating, and pursuing a criminal prosecution." *Quinn v. Roach*, 326 F. App'x 280, 292 (5th Cir. 2009) (citations omitted). Clearly included in this immunity is a prosecutor's "decision to file or not

file criminal charges.” *Id.* (citing *Oliver v. Collins*, 904 F.2d 278, 281 (5th Cir. 1990)). Lessor disagrees with District Attorney Smith’s decision to pursue a criminal prosecution for the felony offense of manufacture of a controlled substance when Lessor was arrested for the misdemeanor offense of cultivation of marijuana. The Court finds the alleged actions taken by Smith fall within the scope of his prosecutorial duties. Therefore, District Attorney Smith is entitled to absolute immunity from the claims asserted in this § 1983 suit.

III. CONCLUSION

For the foregoing reasons, Defendant District Attorney Smith is entitled to absolute immunity from the claims asserted in this § 1983 Complaint. Lessor’s claims will be dismissed with prejudice as seeking relief against a defendant who is immune from such relief pursuant to 28 U.S.C. § 1915 (e)(2)(B)(iii).

IT IS, THEREFORE, ORDERED AND ADJUDGED that pro se Plaintiff Keith Michael Lessor’s § 1983 claims are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915 (e)(2)(B)(iii).

SO ORDERED AND ADJUDGED, this the 25th day of October, 2016.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE