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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Peter Anthony Mangano,)	CIV-08-1486-PHX-MHB
Plaintiff,)	ORDER
vs.)	
Yuma Probation Department,)	
Defendant.)	

Pending before the Court is “State Defendant’s Motion to Dismiss” (Doc. #7). After considering the arguments raised by the parties in their briefing, the Court now issues the following ruling.

BACKGROUND

This lawsuit arises from Plaintiff Peter Anthony Mangano’s allegation that Ms. Hoffman, a supervisor in the Yuma Probation Department (Defendant), falsely caused the arrest of Plaintiff. It is unclear from the pleadings the exact date of Plaintiff’s alleged false arrest. However, Plaintiff indicated twice in his Complaint that his arrest occurred nearly two years ago. (Doc. #1 at 1, 5.) Specifically, Plaintiff states on page one, line 4, that he was arrested “over two plus years” ago, and on page five, line 9, he asserts that his “pleading is filed into the 24th month of the Statute of Limitations.” (Doc. #1 at 1, 5.) The only defendant Plaintiff lists in his Complaint is the Yuma Probation Department.

1 Plaintiff filed his “False Arrest” Complaint on August 12, 2008 (Doc. # 1). Defendant
2 filed a Motion to Dismiss on October 7, 2008 (Doc. #7). Plaintiff filed its Response on
3 December 9, 2008 (Doc. #17).

4 DISCUSSION

5 Defendant contends that Plaintiff’s claim is barred because the Yuma Probation
6 Department is not a jural entity. In response, Plaintiff concedes that he failed to name the
7 State of Arizona as the defendant. Additionally, Plaintiff asks the Court to mitigate his
8 failure and hold him “to less stringent standards” and protect him from “the consequences
9 of confusion” (Doc. #17 at 3, 4) (citing Haines v. Kerner, 404 U.S. 519, 520-521 (1972), and
10 Robinson v. America’s Best Contacts and Eyeglasses, 876 F. 2d 596 (7th Cir. 1989)).
11 Plaintiff cites to Haines v. Kerner in error. In Haines, the Supreme Court held when a *pro*
12 *se* plaintiff submits a complaint, his brief statement of the case should be held “to less
13 stringent standards” before the Court dismisses the case for failure to state a claim. 404 U.S.
14 at 520-521. The Court did not rule that less stringent standards should apply because a
15 plaintiff failed to identify the correct defendant. Additionally, Plaintiff’s “consequences of
16 confusion” argument is invalid because in the opinion of the non-binding case of Robinson
17 v. America’s Best Contacts and Eyeglasses, the Seventh Circuit does not hold that “a district
18 court should also take care to protect [*pro se*] plaintiffs from consequences of confusion”
19 (Doc. #17 at 4).

20 Probation departments are not jural entities. The probation departments of the various
21 counties in Arizona are agencies of the judicial department of the State. State v. Pima
22 County Adult Probation Department, 147 Ariz. 146, 148-149 (App. 1985). State agencies
23 created by the legislature have only the powers and attributes ascribed to them by the
24 legislature. Cox v. Pima County Law Enforcement Merit Improvement Council, 27 Ariz.
25 App. 494 (1976). The Arizona Legislature has conferred the right to sue and be sued to some
26 state agencies. The agencies that have been conferred those rights are referred to as jural
27 entities. An action cannot be brought against a state agency that lacks the authority to sue
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1 and be sued. Kimball v. Shofstall, 17 Ariz. App. 11 (1972). The legislation which provides
2 for the establishment and administration of probation departments, A.R.S. Title 12, Chapter
3 2, Articles 6 & 7 does not include an authorization for probation departments to sue or be
4 sued. The Yuma Probation Department is therefore not a jural entity, and cannot be subject
5 to suit.

6 **CONCLUSION**

7 The Court – finding that Plaintiff has failed to sue a jural entity – will grant the
8 Defendant’s Motion to Dismiss.

9 Accordingly,

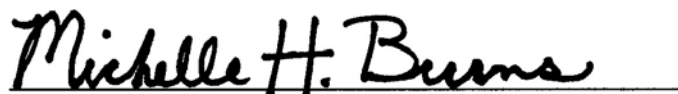
10 **IT IS ORDERED** that “State Defendant’s Motion to Dismiss” (Doc. #7) is
11 **GRANTED**;

12 **IT IS FURTHER ORDERED** that Plaintiff’s “Motion to Allow Electronic Filing”
13 (Doc. # 18) is **DENIED** as moot;

14 **IT IS FURTHER ORDERED** that Defendant’s “Emergency Motion for Stay of Case
15 Proceedings” (Doc. #20) is **DENIED** as moot;

16 **IT IS FURTHER ORDERED** that this case is **DISMISSED** without prejudice.

17 DATED this 8th day of July, 2009.

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19 Michelle H. Burns
20 United States Magistrate Judge
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