

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

HARVEY CULLUM

PLAINTIFF

V.

CASE NO. 4:11CV00831 JMM

JOHN C. ALDWORTH, ET AL.

DEFENDANTS

ORDER

Pending before the Court are Defendants' Motion to Dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim for which relief can be granted (#5 and #8). For the reasons stated below the motions are granted and Plaintiff's complaint is dismissed with prejudice. Judgment will be entered accordingly.

Plaintiff filed a complaint against John C. Aldworth in his official and individual capacity as the District Court Judge of Clinton, Arkansas, and against the District Courts of Van Buren and Cleburne Counties alleging that Plaintiff had been deprived of his constitutional right to a jury trial.

The Defendants have filed motions to dismiss contending that the complaint is barred (1) by the doctrines of sovereign, absolute judicial, and qualified immunities; (2) by the doctrines of *res judicata* and *collateral estoppel* based upon the decision issued by United States District Chief Judge Leon Holmes dismissing Defendant's complaint filed in Case No. 1:10CV0070 which was substantially identical to the complaint in the present case; and (3) as a matter of law because Defendant would have received a jury trial had he appealed his conviction in district court to circuit court. *See* Ark. Code Ann. § 16-17-703.

Based upon the facts alleged by the Plaintiff, he has failed to state a claim upon which relief can be granted because he has not been denied a jury trial. Plaintiff failed to follow the procedure set forth in Arkansas Code Annotated § 16-17-703 which would have given him the opportunity for a jury trial. Plaintiff's contention that § 16-17-703 is unconstitutional is without merit. *See McClanahan v. Gibson*, 296 Ark. 305, 756 S.W.2d 889 (1988) (Ark. Code Ann. § 16-17-70 does not diminish the right to a trial by jury).

IT IS SO ORDERED THIS 3 day of January, 2012.



James M. Moody
United States District Judge