

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JEREMY DALE REESE

PLAINTIFF

v.

Civil No. 09-5153

BRYNNA BARNICU, Public Defender;
STARK LIGON, Executive Director,
Supreme Court of Arkansas Office
of Professional Conduct; CAPT.
HOLLY; VAN STONE, Prosecutor;
NATHAN SMITH, Prosecuting Attorney;
STEPHANIE MCLEMORE, Prosecuting
Attorney; KEITH FERGUSON, Sheriff;
LT. CARTER; and ROBINE GREEN, Judge

DEFENDANTS

O R D E R

Now on this 17th day of September, 2009, come on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #3) and plaintiff's **Objections** thereto (document #7), and the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff brought suit under **42 U.S.C. § 1983**, alleging that defendant Barnicu, acting as his defense attorney, forged his name to a plea agreement. He alleges that defendants Ligon, Holly, Stone, Ferguson, and Carter were told about the alleged forgery, but did nothing. He also claims that he was wrongfully charged "with a personal injury accident," and that defendants Mclemore (prosecutor), Smith (prosecutor) and Green (judge) knew or should have known that the charge was wrongful, and that he tried to show Green the alleged forgery but she refused to look

into the matter.

2. The Magistrate Judge reported that defendants Green, Stone, Smith, and Mclemore have absolute judicial or prosecutorial immunity from suit, and that defendant Ligon has qualified immunity. He reported that the claim against defendant Barnicu is subject to dismissal because Barnicu was not acting under color of state law in defending plaintiff and § 1983 exists only to vindicate constitutional violations committed under color of state law. Finally, he reported that plaintiff's claims against defendants Ferguson, Holly and Carter are subject to dismissal because there is no allegation that they violated any constitutional right.

The Magistrate Judge recommended that plaintiff's claims be dismissed as frivolous, as failing to state claims on which relief can be granted, and as seeking relief against defendants who are immune from suit or not acting under color of state law. He further recommended that plaintiff be denied *in forma pauperis* status, but remain liable for the full filing fee, as provided in the Prison Litigation Reform Act.

3. Plaintiff filed belated Objections, but they are without merit. He basically objects that no one is above the law, which the Court takes to be an objection to the application of absolute judicial immunity, absolute prosecutorial immunity, and qualified immunity. These immunities have been upheld repeatedly by the

United States Supreme Court, and plaintiff makes no showing that they are inapplicable in the circumstances of his case.

Plaintiff's Objections also reference many exhibits which are not attached to the Objections. However, the descriptions of the exhibits indicate that they would not alter the application of immunity to the claims against Green, Stone, Smith, Mclemore or Ligon. Nor is there anything about them, so far as the Court can tell from the descriptions, that would amount to a statement of a claim as against Ferguson, Holly or Carter.

4. It appears that plaintiff's real complaint is against Barnicu, but he cannot overcome the legal principle that an attorney does not act under color of state law while representing a client, even if paid with state funds. Since § 1983 exists only to vindicate constitutional violations committed under color of state law, there is no viable claim against Barnicu under that statute, although it is possible that plaintiff may have recourse in a malpractice claim against her.

5. The Court has fully considered the Report And Recommendation Of The Magistrate Judge, and finds that it is sound and should be adopted in toto. The Court further finds that plaintiff's Objections are without merit, and they will be overruled.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #3) is **adopted in toto**.

IT IS FURTHER ORDERED that plaintiff's **Objections** (document #7) are **overruled**.

IT IS FURTHER ORDERED that this matter is **dismissed**.

IT IS FURTHER ORDERED that plaintiff is denied *in forma pauperis* status, but remains liable for the full filing fee, as provided in the Prison Litigation Reform Act.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE