

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ARTAVIUS BROXTON,

Plaintiff,

v.

Case No: 6:17-cv-865-Orl-37DCI

STATE OF FLORIDA,

Defendant.

ORDER

This cause is before the Court on initial review of Plaintiff's Civil Rights Complaint ("Complaint," Doc. 1). Plaintiff, who is incarcerated at the Brevard County Jail and proceeding *pro se*, filed the Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the filing fee or moved to proceed *in forma pauperis* in this action. For the reasons stated herein, the Complaint will be dismissed for failure to state a claim.

I. FACTUAL BACKGROUND

Plaintiff claims that "the State of Florida [is] in violation of Double Jeopardy which is unconstitutional[]" (Doc. 1 at 6). He requests that the Court "investigate the 18th Judicial Circuit" (*Id.* at 5).

II. LEGAL STANDARD

Plaintiff seeks redress from a governmental entity or employee, and, pursuant to 28 U.S.C. section 1915A(a), the Court is obligated to screen such a prisoner civil rights complaint as soon as practicable. On review, the Court is required to dismiss the complaint (or any portion thereof) under the following circumstances:

- (b) Grounds for Dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. §1915A(b); see also 28 U.S.C. §1915(e)(2)(B)(i) (“[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous or malicious.”).¹ Additionally, the Court must read a plaintiff’s *pro se* allegations in a liberal fashion. *Haines v. Kerner*, 404 U.S. 519 (1972).

“To establish a claim under 42 U.S.C. § 1983, a plaintiff must prove (1) a violation of a constitutional right, and (2) that the alleged violation was committed by a person acting under color of state law.” *Holmes v. Crosby*, 418 F.3d 1256, 1258 (11th Cir. 2005).

III. ANALYSIS

Absent a State’s consent, the Eleventh Amendment bars a civil rights suit in a federal court that names the State as a defendant, even a claim seeking injunctive relief. See *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). The Eleventh Amendment bar extends to suits against departments or agencies of the State having no existence apart from the State. See *Mt. Health City Board of Education v. Doyle*, 429 U.S. 274, 280

¹ “A claim is frivolous if it is without arguable merit either in law or in fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

(1977). Consequently, in the present case, Defendant State of Florida cannot be named as a Defendant in a section 1983 suit. See *Oliver v. Supreme Court of Pennsylvania*, No. Civ. A. No. 88-8171, 1989 WL 1592 (E.D. Pa. January 12, 1989). Accordingly, this case is dismissed as frivolous.


IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. This case is **DISMISSED**.
2. The Clerk of the Court is directed to enter judgment in favor of Defendant and to close this case.

DONE and **ORDERED** in Orlando, Florida on May 17th, 2017.




ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Unrepresented Party
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