

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

2009 NOV -2 PM 4:13

C. Robinson
SOUTHERN DISTRICT OF GEORGIA

MARK STEPHEN HUDSON,

Plaintiff,

vs.

Judge D. JAY STEWART,
and STATE OF GEORGIA,

Defendants.

CIVIL ACTION NO.: CV209-151

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who is currently housed at Long State Prison in Ludowici, Georgia, filed an action pursuant to 42 U.S.C. § 1983. A prisoner proceeding against officers or employees of government entities must comply with the mandates of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A. In determining compliance, the court shall be guided by the longstanding principle that *pro se* pleadings are entitled to liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972); Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988).

28 U.S.C § 1915A requires a district court to screen the complaint for cognizable claims before or as soon as possible after docketing. The court must dismiss the complaint or any portion thereof that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune to such relief. 28 U.S.C. § 1915A (b)(1) and (2).

In Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997), the Eleventh Circuit interpreted the language contained in 28 U.S.C. § 1915(e)(2)(B)(ii), which is nearly identical to that contained in the screening provisions at § 1915A(b). As the language of § 1915(e)(2)(B)(ii) closely tracks the language of Federal Rule of Civil Procedure 12(b)(6), the court held that the same standards for determining whether to dismiss for failure to state a claim under Rule 12(b)(6) should be applied to prisoner complaints filed pursuant to § 1915(e)(2)(B)(ii). Mitchell, 112 F.3d at 1490. The Court may dismiss a complaint for failure to state a claim only where it appears beyond a doubt that a *pro se* litigant can prove no set of facts that would entitle him to relief. Hughes v. Rowe, 449 U.S. 5, 10 (1980); Mitchell, 112 F.3d at 1490. While the court in Mitchell interpreted § 1915(e), its interpretation guides this Court in applying the identical language of § 1915A.

Plaintiff contends that he filed a writ of mandamus with the Long County Superior Court on April 9, 2009, and requested the Long County Superior Court to order the warden at Long State Prison to report Plaintiff's work incentive credits to the Board of Pardons and Paroles. According to Plaintiff, he would have to serve less time in prison if he were given these credits. Plaintiff contends that the Long County Superior Court has not entered an order on his petition, which is denying him his First and Sixth Amendment rights.

Plaintiff names as a Defendant Superior Court Judge D. Jay Stewart. Congress did not abrogate the doctrine of judicial immunity when it enacted section 1983. Judicial immunity is an absolute immunity, and it applies even when a judge acts maliciously. Stump v. Sparkman, 435 U.S. 349, 356 (1978) (holding judicial immunity doctrine

applies in § 1983 actions); Harris v. Deveaux, 780 F.2d 911, 914 (11th Cir. 1986). Absolute immunity not only protects against liability but also against a case going to trial at all. Harris, 780 F.2d at 914 (citing Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). To determine whether a judge is entitled to absolute immunity from money damages under section 1983, a two-part test was established in Stump: 1) whether the judge dealt with the plaintiff in a judicial capacity; and 2) whether the judge acted in the “clear absence of all jurisdiction.” Id. (quoting Stump, 435 U.S. at 357). The second prong of this test is “only satisfied if a judge completely lacks subject matter jurisdiction.” Id. at 916. Plaintiff has failed to make any allegations which would indicate Defendant Stewart acted in the clear absence of jurisdiction. Accordingly, Plaintiff cannot sustain his claims against Defendant Stewart.

Plaintiff also names the State of Georgia as a Defendant in this case. The Eleventh Amendment protects states from being sued in federal court without their consent. Manders v. Lee, 338 F.3d 1304, 1308 (11th Cir. 2003). As the State of Georgia has not consented to be sued in this Court, Plaintiff’s claims against the State of Georgia cannot be sustained.

In addition, it seems that Plaintiff has available to him the option of filing a writ of mandamus with the Georgia Supreme Court. The Georgia Supreme Court has the authority “[t]o grant any writ necessary to carry out any purpose of its organization or to compel any inferior tribunal or officers thereof to obey its order.” O.C.G.A. § 15-2-8(3). There is no evidence Plaintiff has pursued this option.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** for failure to state a claim upon which relief may be granted.

SO REPORTED and **RECOMMENDED**, this 2nd day of November, 2009.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE