

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

GREG DAVIS,)
)
 Petitioner,)
)
 v.) CV416-119
)
 SAMUEL S. OLENS;)
 Attorney General; JUDGE)
 MICHAEL L. KARPFF,)
)
 Respondents.)

CV416-119

U.S. DISTRICT COURT
SAVANNAH, GA.
2017 MAR -6 PM 2:02
CLERK
S. DIST. OF GA.

ORDER

Proceeding *pro se*, Greg Davis filed a “Motion Under Rule 60(b)(3) Fraud.” Doc. 1. But it had nothing to do with anything that’s occurred in this Court. Instead, it attacked what Davis seemed to say was a state criminal court “competency judgment” against him. *Id.* at 4. The Clerk docketed it as a 28 U.S.C. § 2254 petition. The Court accepted the Clerk’s designation for docket-keeping purposes but abstained from judicially characterizing the filing as a § 2254 petition -- until Davis clarified what he sought. It directed the Clerk to send him specific forms for filing both habeas and civil rights cases, and gave him a deadline for

filing the one claim he intended to advance. *Davis v. Olens*, 2016 WL 3034069 at * 2 (S.D. Ga. May 26, 2016).

Still proceeding *pro se*, Davis has responded with a 42 U.S.C. § 1983 form Complaint raising claims against Georgia's Attorney General and a state court judge. Doc. 4. However, he is an inmate who also moves for leave to proceed *in forma pauperis*. Doc. 2. That triggers application of the Prison Litigation Reform Act (PLRA) and this Court's two-step, Consent and Prison Account process. *See Smith v. Savannah Metro Police Department*, 2016 WL 4492821 at * 4 (S.D. Ga. Aug. 25, 2016). Davis faces a \$350 filing fee on that score. *Hachey v. Moody*, 2016 WL 7242563 at * 1 (S.D. Ala. Nov. 21, 2016). But if in substance he is bringing a habeas petition, then a different (\$5) fee applies. 28 U.S.C. § 1914(a); *Ubele v. United States*, 2016 WL 3276958 at *1 n. 1 (S.D. Ga. June 13, 2016). And substance trumps nomenclature. *See Castro v. United States*, 540 U.S. 375, 381 (2003) (substance must govern over nomenclature, so a proceeding's label that a litigant chooses is irrelevant); *Moses v. Kramer*, 2012 WL 1448114 at *1 (S.D. Ga. Feb. 2, 2012).

Davis' latest pleading reveals the substance of his case. Evidently the State prosecuted Davis for "several crimes arising out of Savannah Georgia in . . . *State of Georgia vs. Greg Davis*, CR95-0503-BIA," doc. 1 at 3, and in that case defendant Judge Michael L. Karpf "perpetrated a fraud in violation of the Federal Rules of Evidence when he selected two state appointed expert witnesses to falsely navigate [sic] and testify that the petitioner was competent to stand trial." Doc. 4 at 10. He seeks no money damages but requests an "evidentiary hearing" to "set aside the judgement." *Id.* at 15; *see also id.* at 5-8 (raising other allegations but essentially urging the same result).

The Court has independently located the State court docket for the 1995-1996, "Case Number CR950503" prosecution of Davis for, *inter alia*, rape, kidnapping and armed robbery. *See* attached. His Department of Corrections record (also attached) shows that he is serving a life sentence on various charges.

The Court concludes that Davis is advancing a § 2254 petition, but evidently is being coy about it (there is an extraordinarily high

probability that it is time-barred).¹ And no prior § 2254 petition shows up in the record. Before passing on his IFP motion, however, the Court will issue him a *Castro* warning² to advise him of the implications of the Court's construction. If he elects to proceed with his § 2254 petition, the Court will (since he is indigent) grant his IFP motion. But if he abandons this case, that motion will be denied as moot.

In any event, Davis is warned that:

No sooner than 30 days from the date this Order is served, the Court will re-characterize your 42 U.S.C. § 1983 Complaint (doc. 4) as a 28 U.S.C. § 2254 petition. You are thus warned of this eventuality, but you can exert some control right now. For example, you can withdraw your § 2254 petition expressly by placing your written election within your prison's mail system by no later than the thirtieth day after the date this Order is served. Or, you can do nothing, in which case (after that 30-day period) the undersigned will advise dismissal of this matter without prejudice -- on abandonment grounds. See LOCAL RULE 41.1.

¹ Davis had to file for § 2254 relief within one year after the date his conviction became final. 28 U.S.C. § 2244(d)(1).

² See *Castro*, 540 U.S. at 383 (“[W]hen a court recharacterizes a *pro se* litigant's [filing] as a first § 2255 motion . . . [it] must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on ‘second or successive’ motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.”). *Castro* and its warnings also apply in the § 2254 context. See *Jones v. O’Neal*, 2012 WL 6084650 at * 1 n. 3 (S.D. Ga. Dec. 6, 2012).

If you choose to proceed under § 2254, you will lose your ability to file any successive petition on this same matter without first seeking permission to do so from the Eleventh Circuit. And any second petition will be subject to the restrictive conditions set forth in 28 U.S.C. § 2244(b)(2) -- conditions that do not apply to a *first* § 2254 petition.

Finally, your current filing (doc. 4) is deficient, so if you wish to proceed under § 2254, you must reconstitute your claims within the AO 241, § 2254 form petition included with this Order. You also must answer all of the questions on that form, including the ¶ 18 "TIMELINESS OF PETITION" question.

The Clerk is **DIRECTED** to: (a) send to Davis a standard form 28 U.S.C. § 2254 petition; and (b) docket-specify the thirty-day deadline noted above.

SO ORDERED, this 6th day of January, 2017.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



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January 04, 2017

Location: Case Details

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Case Details

State
VS.
DAVIS, GREG

- [Case Events](#)
- [Charges](#)
- [Parties](#)
- [Proceedings](#)

Case Information		Defendant Information	
Court:	Superior	Name:	DAVIS, GREG
Case Number:	CR950503	DIN:	X0057558
Case Type:	RPF	Gender:	MALE
Judge:	HONORABLE JAMES BASS	Race:	AFRICAN AMERICAN
Assistant District Attorney:	MELANIE HIGGINS	Height:	68
Date Filed:	3/8/1995	Weight:	150
Status:	CLOSED - OTHER/MENTALLY ILL	Eyes:	BROWN
Disposition Date:	9/23/1996	Hair:	BROWN
Disposition:	OTHER/MENTALLY ILL		

Attorney Information
DONALD B III LOWE 25 POINTER PLACE SAVANNAH, GA 31419

Bondsman Information
N/A

Case Events				
Date	Time	Code	Judge	Action
9/23/1996	09:00AM	ARRAIGNMENT/PLEA HEARING	JAMES BASS	
9/23/1996	10:00AM	JURY TRIAL	JAMES BASS	RESCHEDULE EVENT
9/23/1996	09:00AM	JURY TRIAL	JAMES BASS	CANCELLED EVENT - CL
9/23/1996	3:00PM	MOTION HEARING (MTH)	JAMES BASS	CANCELLED EVENT - CL
9/16/1996	10:00AM	JURY TRIAL	JAMES BASS	CANCELLED EVENT - CL
7/16/1996	09:00AM	ARRAIGNMENT/PLEA HEARING	JAMES BASS	
6/24/1996	11:00AM	JURY TRIAL	JAMES BASS	EVENT COMPLETE
5/20/1996	10:00AM	JURY TRIAL	JAMES BASS	RESCHEDULE EVENT
4/8/1996	10:00AM	JURY TRIAL	JAMES BASS	RESCHEDULE EVENT
2/26/1996	11:00AM	JURY TRIAL	JAMES BASS	RESCHEDULE EVENT
1/29/1996	10:00AM	JURY TRIAL	MICHAEL KARPFF	RESCHEDULE EVENT
11/6/1995	10:00AM	JURY TRIAL	MICHAEL KARPFF	RESCHEDULE EVENT
9/27/1995	10:00AM	JURY TRIAL	MICHAEL KARPFF	RESCHEDULE EVENT
8/4/1995	2:00PM	ARRAIGNMENT/PRETRIAL HEARING	MICHAEL KARPFF	
7/5/1995	11:00AM	ARRAIGNMENT/PRETRIAL HEARING	MICHAEL KARPFF	RESCHEDULE EVENT
5/30/1995	11:00AM	ARRAIGNMENT/PRETRIAL HEARING	MICHAEL KARPFF	RESCHEDULE EVENT
4/24/1995	10:00AM	ARRAIGNMENT/CALENDAR CALL	MICHAEL KARPFF	

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Charges					
Charge	Description	Counts	Severity	Charge Date	Disposition
16-8-2	THEFT BY TAKING	1	*	9/23/1996	Other/ Mentally Ill 9/23/1996

Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-5-40	KIDNAPPING	1	FELONY	9/23/1996	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-5-40	KIDNAPPING	1	FELONY	12/7/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-5-21	AGGRAVATED ASSAULT	1	FELONY	12/7/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-8-41	ARMED ROBBERY	1	FELONY	12/7/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
				NaN	-PRISON
16-6-1	RAPE	2	FELONY	12/6/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
				NaN	-PRISON
16-5-40	KIDNAPPING	2	FELONY	12/6/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-8-41	ARMED ROBBERY	1	FELONY	12/16/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
				NaN	-PRISON
16-8-41	ARMED ROBBERY	1	FELONY	12/6/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
				NaN	-PRISON
16-5-40	KIDNAPPING	1	FELONY	12/6/1994	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
		20 Years		NaN	-PRISON
16-8-41	ARMED ROBBERY	1	FELONY	9/23/1996	Other/ Mentally Ill 9/23/1996
Sentencing Details:		Description		Fine	Duration
				\$0.00	-PRISON

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Proceedings

9/23/1996		CASE DISPOSED	OM	JAMES BASS	CASE DISPOSED XXXXXX OM1 BA
9/23/1996	09:00AM	ARRAIGNMENT/PLEA HEARING		JAMES BASS	
9/23/1996	10:00AM	JURY TRIAL	RESCHEDULE EVENT	JAMES BASS	
9/23/1996	09:00AM	JURY TRIAL	CANCELLED EVENT - CL	JAMES BASS	
9/23/1996	3:00PM	MOTION HEARING (MTH)	CANCELLED EVENT - CL	JAMES BASS	
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7/16/1996	09:00AM	ARRAIGNMENT/PLEA HEARING		JAMES BASS	
6/24/1996	11:00AM	JURY TRIAL	EVENT COMPLETE	JAMES BASS	COMPETENCY HEARING
5/20/1996	10:00AM	JURY TRIAL	RESCHEDULE EVENT	JAMES BASS	
4/8/1996	10:00AM	JURY TRIAL	RESCHEDULE EVENT	JAMES BASS	
2/26/1996	11:00AM	JURY TRIAL	RESCHEDULE EVENT	JAMES BASS	
1/29/1996	10:00AM	JURY TRIAL	RESCHEDULE EVENT	MICHAEL KARPF	
11/6/1995	10:00AM	JURY TRIAL	RESCHEDULE EVENT	MICHAEL KARPF	SPECIAL PLEA
9/27/1995	10:00AM	JURY TRIAL	RESCHEDULE EVENT	MICHAEL KARPF	SPECIAL PLEA
8/4/1995	2:00PM	ARRAIGNMENT/PRETRIAL HEARING		MICHAEL KARPF	

7/5/1995	11:00AM	ARRAIGNMENT/PRETRIAL HEARING	RESCHEDULE EVENT	MICHAEL KARPF	
5/30/1995	11:00AM	ARRAIGNMENT/PRETRIAL HEARING	RESCHEDULE EVENT	MICHAEL KARPF	
4/24/1995	10:00AM	ARRAIGNMENT/CALENDAR CALL		MICHAEL KARPF	

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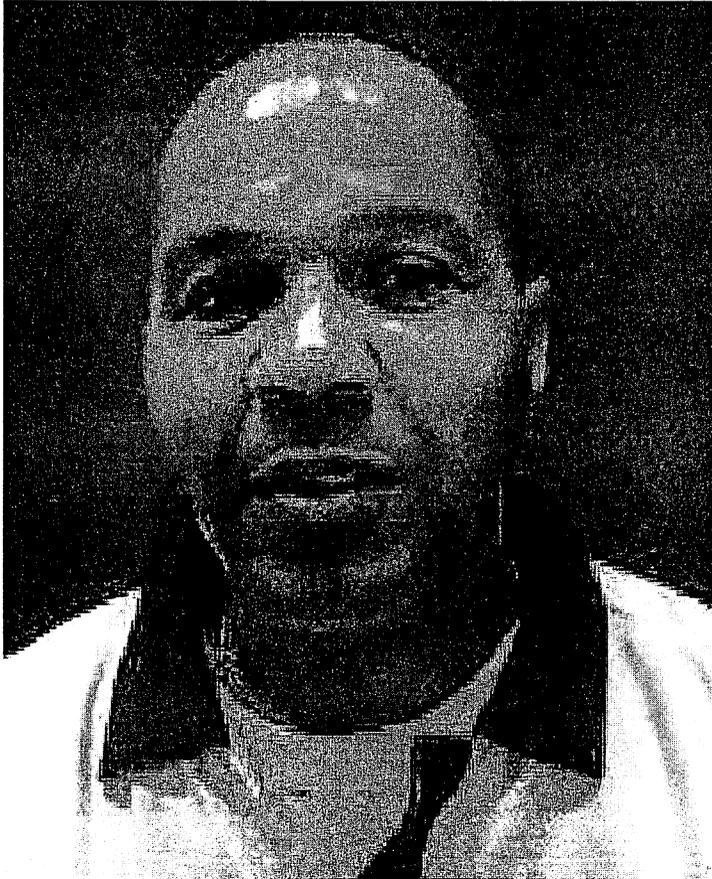
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NAME: DAVIS, GREG

GDC ID: 0000285575



PHYSICAL DESCRIPTION

YOB: 1966

RACE: BLACK

GENDER: MALE

HEIGHT: 5'09"

WEIGHT: 172

EYE COLOR: BROWN

HAIR COLOR: BLACK

SCARS, MARKS, TATTOOS

INCARCERATION DETAILS

MAJOR OFFENSE: RAPE

MOST RECENT INSTITUTION: CENTRAL STATE PRISON

MAX POSSIBLE RELEASE DATE: LIFE

Important Release Information

ACTUAL RELEASE DATE: CURRENTLY SERVING

CURRENT STATUS: ACTIVE

KNOWN ALIASES

A.K.A. DAVIS,GREG

A.K.A. DAVIS,GREGORY

STATE OF GEORGIA - CURRENT SENTENCES

CASE NO: 367732

OFFENSE: RAPE

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 12/04/1994

SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732

OFFENSE: THEFT BY TAKING

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 12/04/1994

SENTENCE LENGTH: 20 YEARS, 0 MONTHS, 0 DAYS

CASE NO: 367732

OFFENSE: RAPE

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 12/04/1994

SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732

OFFENSE: RAPE

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 11/30/1994

SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732

OFFENSE: ARMED ROBBERY

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 11/30/1994

SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732

OFFENSE: ARMED ROBBERY

CONVICTION COUNTY: CHATHAM COUNTY

CRIME COMMIT DATE: 11/30/1994

SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732
OFFENSE: ARMED ROBBERY
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732
OFFENSE: ARMED ROBBERY
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: NOT AVAILABLE

CASE NO: 367732
OFFENSE: KIDNAPPING
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: 20 YEARS, 0 MONTHS, 0 DAYS

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OFFENSE: KIDNAPPING
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
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CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: 20 YEARS, 0 MONTHS, 0 DAYS

CASE NO: 367732
OFFENSE: KIDNAPPING
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: 20 YEARS, 0 MONTHS, 0 DAYS

CASE NO: 367732
OFFENSE: AGGRAV ASSAULT
CONVICTION COUNTY: CHATHAM COUNTY
CRIME COMMIT DATE: 11/30/1994
SENTENCE LENGTH: 20 YEARS, 0 MONTHS, 0 DAYS

STATE OF GEORGIA - PRIOR SENTENCES

STATE OF GEORGIA - INCARCERATION HISTORY

INCARCERATION BEGIN: 02/20/1997

INCARCERATION END: ACTIVE

INCARCERATION BEGIN: 03/24/1993

INCARCERATION END: 09/13/1993

INCARCERATION BEGIN: 09/13/1989

INCARCERATION END: 10/11/1991

INCARCERATION BEGIN: 06/01/1989

INCARCERATION END: 06/01/1989