

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

DANIEL REESE FUQUAY, SR.,	)	
	)	
Plaintiff,	)	
vs.	)	No. 3:09-cv-166-WTL-WGH
	)	
CARL A. HELDT, et al.,	)	
	)	
Defendants.	)	

**ENTRY**

**I.**

“A provision added to the Judicial Code by the Prison Litigation Reform Act of 1996 requires the district judge to screen prisoner complaints at the earliest opportunity and dismiss the complaint, in whole or part, if . . . it ‘fails to state a claim upon which relief can be granted.’” *Sanders v. Sheahan*, 198 F.3d 626 (7th Cir. 1999) (quoting 28 U.S.C. § 1915A(b)(1)). In screening the claims against defendants Carl Heldt, David Kiely, Stanley Levco, Stephen Owens, and Barbara Williams in this case, the court concludes that such claims must be **dismissed** as legally insufficient.

Defendants Heldt and Kiely are state court judges who presided over criminal proceedings involving the plaintiff. Because the acts alleged in the complaint were taken within the course of their duties, they are entitled to judicial immunity for these acts. See *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967) (applying judicial immunity to actions under 42 U.S.C. § 1983).

Defendant Levco is a prosecuting attorney who was also involved in the criminal proceedings. Prosecutors are absolutely immune from liability in § 1983 lawsuits based on “prosecutorial actions that are ‘intimately associated with the judicial phase of the criminal process.’” *Van de Kamp v. Goldstein*, 129 S.Ct. 855, 857 (2009)(quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); see also *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993).

Defendants Owens and Williams represented plaintiff as defense counsel during his criminal proceedings. The claims against these defendants, brought pursuant to 42 U.S.C. § 1983, cannot proceed because they are not state actors. See *Polk County v. Dodson*, 454 U.S. 312, 324 (1981) (public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal case); *Russell v. Millsap*, 781 F.2d 381, 383 (5th Cir. 1985) (retained counsel does not act under color of state law).

No partial final judgment shall issue as to the claims resolved in this Entry.

II.

The motion for judgment on the pleadings filed by defendants Heldt and Kiely (dkt 27) is **denied** as moot.

III.

The rulings in Part I of this Entry, together with those in the Entry of December 29, 2010, leave unresolved only the claims against defendants Eric Williams and Kenny Roy. These defendants, together with the plaintiff, shall have **through July 16, 2010** in which to file any dispositive motion.

**IT IS SO ORDERED.**

Date: 05/27/2010

Distribution:

Daniel Reese Fuguay Sr.  
DOC #892750  
Branchville Correctional Facility  
21390 Old State Road 37  
Branchville, IN 47514

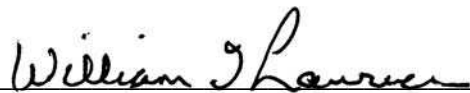
David V. Miller  
Ziemer Stayman Weitzel & Shoulders  
dmiller@zsws.com

Keith W. Vonderahe  
Ziemer Stayman Weitzel & Shoulders  
kvonderahe@zsws.com

Betsy M. Isenberg  
Indiana Office of the Attorney General  
betsy.isenberg@atg.in.gov

Cory Christian Voight  
Indiana Office of the Attorney General  
cory.voight@atg.in.gov

Jean Marie Blanton  
Ziemer Stayman Weitzel & Shoulders  
jblanton@zsws.com



Hon. William T. Lawrence, Judge  
United States District Court  
Southern District of Indiana