

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CHARLES A. BURNETT,

Plaintiff,

v.

CASE NO. 10-3194-SAC

STATE OF KANSAS, et al.,

Defendants.

O R D E R

Plaintiff proceeds in forma pauperis on an amended complaint seeking relief under 42 U.S.C. § 1983, filed while plaintiff was confined as a pretrial detainee in the Atchison County jail.

Alleging misconduct related to his arrest, prosecution, and confinement in the Atchison County jail, plaintiff seeks damages from five defendants in his amended complaint: the State of Kansas, Atchison County Judge Martin Asher, Atchison County Attorney Gerald Kuckelman, Atchison Detective Terry Kelley, and Atchison Police Officer Kuris Page. The court reviewed plaintiff's allegations, and on June 24, 2011, directed plaintiff to show cause why the amended complaint should not be summarily dismissed as stating no claim for relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

The court found plaintiff's claim for damages against the State of Kansas was barred by the Eleventh Amendment, and absolute immunity barred plaintiff's claim for damages against a state district court judge and state prosecutor. *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *Stump v. Sparkman*, 435 U.S. 349, 362-64 (1978); *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). The court

further found plaintiff's allegations of misconduct against Officers Kelly and Page essentially challenged the validity of the search warrant and arrest underlying plaintiff's present state conviction, thus no cognizable claim for damages can arise until plaintiff demonstrates that his conviction has been reversed, or otherwise invalidated. *Heck v. Humphrey*, 512 U.S. 477 486-87 (1994).

In response, plaintiff addresses issues concerning the show cause order entered in his companion case, *Burnett v. State of Kansas*, Case No. 10-3180-SAC, but provides no response to the show cause order entered in the instant action other than to indicate his direct appeal is pending before the Kansas Court of Appeals.¹ Accordingly, for the reasons stated herein and in the show cause order entered on June 24, 2011, the court dismisses the amended complaint.

IT IS THEREFORE ORDERED that the amended complaint is dismissed as stating no claim for relief, and that dismissal of plaintiff's claims against defendants Kelly and Page are dismissed without prejudice.

IT IS SO ORDERED.

DATED: This 5th day of January 2012 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge

¹See *State v. Burnett*, Appeal No. 105159 (plaintiff's consolidated appeal from his state conviction).