

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
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BROOKLYN OFFICE

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FREEMAN WEBB,

Plaintiff,

-against-

07 CV 2021 (ARR) (LB)

NOT FOR ELECTRONIC
OR PRINT
PUBLICATION

BRION D. TRAVIS, Chair, New York State Division of Parole; HONORABLE JUDGE JOAN O'DWYER, Queens County Supreme Court; HONORABLE JUDGE WILLIAM E. McCARTHY, Albany County Supreme Court; HONORABLE JOHN/JANE DOE, Queens County Supreme Court Judge for Plaintiff's 1980 conviction for robbery in the first degree under indictment number 421-80, and the HONORABLE JOHN/JANE DOE, Queens County Supreme Court Judge for Plaintiff's 1985 conviction for burglary in the second degree under indictment number 2856-85, they are sued in their individual and official capacity(s),

Defendants.

OPINION AND ORDER

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ROSS, United States District Judge:

Plaintiff Freeman Webb, a prisoner incarcerated at Five Points Correctional Facility, brings this action pro se pursuant to 42 U.S.C. §§ 1983 and 1985. Plaintiff alleges that each of the judges named as defendants did not have jurisdiction to ~~preside~~ over his criminal trials held in 1980, 1985, and 1993, which resulted in his convictions, or to ~~preside~~ over his Article 78 petition challenging the denial of parole. Compl. at 4-6, 9-10. Plaintiff further alleges that defendant Travis failed to accommodate his disability when he was denied parole on August 28, 2003. Compl. at 7. Plaintiff seeks damages, injunctive and declaratory relief. Compl. at 10-15. The court grants plaintiff's request to proceed in forma pauperis solely for the purpose of this order.

DISCUSSION

Standard of Review

Title 28, Section 1915A, of the United States Code requires this court to review the complaint in a civil action in which a prisoner seeks redress from a governmental entity or from officers or employees thereof, and to “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, 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) (emphasis added); see Carr v. Dvorin, 171 F.3d 115, 116 (2d Cir. 1999) (*per curiam*). “A complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (*per curiam*) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

Because plaintiff is proceeding *pro se*, his complaint must be read liberally and interpreted as raising the strongest arguments it suggests. See McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004); Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). If a liberal reading of the complaint “gives any indication that a valid claim might be stated,” this Court must grant leave to amend it. See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000); Gomez v. USAA Fed. Sav. Bank, 171 F.3d 794, 795 (2d Cir. 1999).

Judicial Immunity

It is well settled that judges have absolute immunity from suit for judicial acts performed in their judicial capacities. Mireles v. Waco, 502 U.S. 9, 11 (1991) (*per curiam*) (“judicial immunity is an immunity from suit, not just from the ultimate assessment of damages.”) (citation omitted). See also Stump v. Sparkman, 435 U.S. 349, 356 (1978); Huminski v. Corsones, 396

F.3d 53, 74-75 (2d Cir. 2005). This absolute “judicial immunity is not overcome by allegations of bad faith or malice,” nor can a judge “be deprived of immunity because the action he took was in error ... or was in excess of his authority.” Mireles, 502 U.S. at 11 (quoting Stump, 435 U.S. at 356). As the alleged wrongdoing of the three Queens County state court judges and one Albany County state court judge were acts performed in their judicial capacities, plaintiff’s claims are foreclosed by absolute immunity and are subject to dismissal. 28 U.S.C. § 1915A(b).¹

To the extent plaintiff sues these defendants in his or her individual capacity seeking injunctive relief rather than money damages, the claims must be dismissed. Pursuant to the Federal Courts Improvement Act (FCIA), Pub.L. No. 104-317, 110 Stat. 3847 (1996), § 309(c) bars injunctive relief in any § 1983 action “against a judicial officer for an act or omission taken in such officer’s judicial capacity ... unless a declaratory decree was violated or declaratory relief was unavailable.” Id. § 309(c), 110 Stat. at 3853 (amending 42 U.S.C. § 1983). See Huminski, 396 F.3d at 74; Bliven v. Hunt, 418 F. Supp. 2d 135, 139 (E.D.N.Y. 2005) (citing cases); Wu v. Levine, No. 05 CV 1234 (NG), 2005 WL 2340722, at *1 (E.D.N.Y. June 7, 2005) (citing Jones v. Newman, No. 98 Civ. 7460 (MBM), 1999 WL 493429, at *6-7 (S.D.N.Y. June 30, 1999)); Kampfer v. Scullin, 989 F. Supp. 194, 201 (N.D.N.Y. 1997). Plaintiff has alleged neither the violation of a declaratory decree nor the unavailability of declaratory relief.

¹ The court notes that defendant Travis may be entitled to judicial immunity to the extent he performed quasi-adjudicative functions. “[P]arole board officials, like judges, are entitled to absolute immunity from suit for damages when they serve a quasi-adjudicative function in deciding whether to grant, deny or revoke parole.” Montero v. Travis, 171 F.3d 757, 761 (2d Cir. 1999) (*per curiam*). In addition, parole board officials performing such “judicial” functions as denying parole “are also entitled to absolute immunity against claims for injunctive relief in circumstances where there is no allegation that the defendant violated a declaratory decree or that declaratory relief was unavailable.” Id. at 762.

Claims against Brion D. Travis, Chair, New York State Division of Parole

Plaintiff alleges that he “appeared before the New York State Board of Parole on August 27, 2003, via teleconferencing, under written protest, at the Riverview Facility in Ogdensburg, New York.” Compl. at 7. Plaintiff further alleges that he informed defendant Travis that “he was an American with a Disability” and that defendant Travis failed to “accom[m]odate the plaintiff’s disability needs.” Compl. at 7. Plaintiff does not describe his disability or explain what type of accommodation was necessary in light of his disability. Plaintiff appealed the denial of parole through the Board of Parole and also filed an Article 78 petition in Albany County to challenge the denial. Compl. at 7-8. He also appealed the denial of the Article 78 to the Third Department, to the New York Court of Appeals and finally to the United States Supreme Court. Compl. at 9. It is unclear whether plaintiff may have a cognizable claim against defendant Travis based on the allegation that he failed to accommodate plaintiff’s disability.

However, pursuant to the venue provision governing federal question jurisdiction, this action must be filed in the judicial district where defendants reside or where a substantial part of the events or omissions giving rise to the claim occurred. See 28 U.S.C. § 1391(b). Here, none of the events alleged occurred within the Eastern District of New York. Rather, defendant Travis is located in Albany County² and a substantial part of the events giving rise to the claim occurred at Riverview Correctional Facility in St. Lawrence County (where the teleconference on plaintiff’s parole hearing was held) and in Albany County (where he appealed the denial of the parole); both counties are located in the Northern District of New York.

² The New York State Division of Parole is located at 97 Central Avenue, Albany, NY 12206 (Albany County).

CONCLUSION

Accordingly, the complaint, filed in forma pauperis, is ~~dismissed~~ against the judicial officers named as defendants pursuant to 28 U.S.C. § 1915A(b). The complaint against defendant Brion D. Travis, Chair, New York State Division of Parole, is hereby transferred to the United States District Court for the Northern District of New York. See 28 U.S.C. §§ 112(a) and 1406(a) (district court may transfer case filed in the wrong district to any district in which it could have been brought).

Enforcement of the Prison Litigation Reform Act is ~~reserved~~ for the transferee court. The court offers no opinion on the merits of plaintiff's claims. That provision of Rule 83.1 of the Local Rules of the Eastern District of New York which requires a five-day delay is waived. No summons shall issue from this Court.

SO ORDERED.

/s/



Allyne R. Ross
United States District Judge

Dated: June 5, 2007
Brooklyn, New York

SERVICE LIST:

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cc: Magistrate Judge Bloom