

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWARD C. BAKER,

Plaintiff,

-v.-

1:08-CV-1252
(LEK/DRH)

CLINTON COUNTY; PATRICK R. MCGILL, Judge;
RICHARD CANTWELL, District Attorney; KRISTY SPRAGUE,
Assistant District Attorney; and DANA M. LOIACONO,
Ex-Assistant District Attorney,

Defendants.

APPEARANCES:

EDWARD C. BAKER
Plaintiff pro se
00-A-4476
Five Points Correctional Facility
Caller Box 119
Romulus, New York 14541

DAVID R. HOMER, U.S. MAGISTRATE JUDGE

REPORT-RECOMMENDATION and ORDER¹

I. Background.

Presently before this Court is an application to proceed in forma pauperis and a civil rights complaint filed by Edward Baker ("Baker" or "plaintiff"). Baker has not paid any fee relating to this action.

Baker brings this action resulting from his 2003 conviction in state court. Baker contends that during his prosecution and trial, the above-named defendants violated his Constitutional rights under the 1st, 5th, 6th and 14th amendments. For a complete statement of plaintiff's claims, reference is made to the complaint. Docket No. 1.

As to Baker's application to proceed in forma pauperis, after reviewing the file,

¹This matter was referred to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b) and N.D.N.Y.L.R. 72.3(c)

the Court finds that plaintiff may properly proceed with this matter in forma pauperis.

II. Plaintiffs' Complaint.

A. Defendant Judge Patrick McGill

One of the named defendants in Baker's complaint is Clinton County Judge Patrick McGill. Baker contends that Judge McGill, among other things, refused to accept a proposed plea agreement, he would not dismiss any of the burglary counts, and he allowed into evidence medical records illegally obtained by the prosecution. For the reasons stated below, the claims against Judge McGill should be dismissed from plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and N.D.N.Y.L.R. Rule 5.4(a).

28 U.S.C. § 1915(e), as amended, directs that the Court:

(2) [S]hall dismiss the case at any time if the court determines that -

(B) the action ... (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

The law in this Circuit clearly provides that "[j]udges enjoy **absolute immunity** from personal liability for 'acts committed within their judicial jurisdiction.'" Young v. Selsky, 41 F.3d 47, 51 (2d Cir. 1994) (emphasis added) (quoting Pierson v. Ray, 386 U.S. 547 (1967)). "The absolute immunity of a judge applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." Young, 41 F.3d at 51 (internal quotations omitted). Accordingly, plaintiff's

claims against Judge McGill should be dismissed.

B. The Remaining Defendants.

As to the remaining defendants in Baker's complaint, the Court finds that the case may proceed.

WHEREFORE, it is hereby

RECOMMENDED that the claims against County Judge Patrick McGill be **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B) and Rule 5.4(a) of the Local Rules of Practice of this District; and it is further

ORDERED, that plaintiff's in forma pauperis application is granted.² The Clerk shall issue summonses and forward them, along with copies of the complaint, to the United States Marshal for service upon the defendants; and it is further

ORDERED, that the Clerk provide the Superintendent of the facility designated by plaintiff as his current location with a copy of plaintiff's authorization form, and notify the official that this action has been filed and that plaintiff is required to pay the entire statutory filing fee of \$350.00 pursuant to 28 U.S.C. § 1915; and it is further

ORDERED, that the Clerk provide a copy of plaintiff's authorization form to the Financial Deputy of the Clerk's Office; and it is further

ORDERED, that a response to the complaint be filed by defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process

² Plaintiff should note that he will still be required to pay fees that he may incur in this action, including but not limited to copying and/or witness fees.

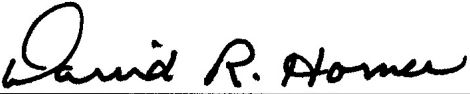
on defendants; and it is further

ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 5th Floor, James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing the date that a true and correct copy of same was mailed to all opposing parties or their counsel. Any document received by the Court or the Clerk that does not include a proper certificate of service will be returned without processing.** Plaintiff must comply with requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in his address; his failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court; and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

Dated: January 7, 2009


United States Magistrate Judge