

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:06CV70

ANDREW C. DAVIS, III,)
)
 Plaintiff,)
)
 Vs.)
)
 ANTHONY DENOME; JAMES)
 WALSH; ROBERT DUDLEY;)
 DEMITRIOS VARELAS; THE)
 STATE OF NORTH CAROLINA;)
 and BROUGHTON STATE)
 HOSPITAL,)
)
 Defendants.)
 _____)

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Plaintiff’s application to proceed without prepayment of fees. The application is granted, but the action is summarily dismissed.

In the proposed complaint, the Plaintiff alleges that he is being held “in captivity” without a hearing or due process. The Court assumes that the Plaintiff has been or is currently hospitalized at the Defendant Broughton Hospital, perhaps pursuant to an involuntary commitment order, and the Defendants are in some way involved in either obtaining the

commitment order or employed by the Hospital and responsible for the Plaintiff's treatment. In any event, the Plaintiff seeks release from Broughton Hospital so that he may return to New Mexico State University. The Court finds the complaint is frivolous and fails to state a claim on which relief may be granted.

“[T]he court *shall dismiss the case at any time* if the court determines that . . . the action . . . is frivolous or malicious [or] fails to state a claim on which relief may be granted” **28 U.S.C. § 1915(e)(2) (emphasis added)**. Under this statutory proscription, the district court must dismiss such a case and it is the intent of Congress that such dismissals occur prior to service of the complaint on defendants. ***Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996); *White v. White*, 886 F.2d 721 (4th Cir. 1989)**. “Legally frivolous claims are based on an ‘indisputably meritless legal theory’ and include ‘claims of infringement of a legal interest which clearly does not exist.’” ***Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989))**.

IT IS, THEREFORE, ORDERED that the application to proceed without the prepayment of costs is hereby **GRANTED**.

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IT IS FURTHER ORDERED that this action is summarily
DISMISSED without the service of process.

Signed: March 1, 2006

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

