

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CV98-03-MU

CARL EDWARD WILEY,)
)
 Petitioner,)
)
 v.)
)
 STATE OF NORTH CAROLINA;)
 PUBLIC DEFENDER CALVIN HILL,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff’s Complaint under 42 U.S.C. § 1983¹, filed March 24, 2005. (Document No. 1.) Upon careful consideration by the Court, for the reasons set forth herein, the Plaintiff’s Complaint will be dismissed.

Plaintiff Complaint, filed as a § 1983 claim, essentially contains an allegation of ineffective assistance of his court appointed criminal counsel, Mr. Calvin Hill. Plaintiff claims that Mr. Hill waived Plaintiff’s probable cause hearing on July 19, 2005 without Plaintiff’s consent.

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Neither a prosecutor not a private defense attorney is amenable to suit under 28 U.S.C. § 1983 on allegations such as the one made here. Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980) (affirming dismissal of 42 U.S.C. § 1983 action against court-appointed attorney as lacking “state action” and therefore failing to state a claim); and Deas

¹ This is Plaintiff’s second § 1983 action filed in this Court. Plaintiff filed his first on February 13, 2006 which was dismissed by this Court on February 24, 2006. See 1:06cv38. In that case, Plaintiff named the North Carolina Court system, District Attorney Chris Hess, Public Defender Calvin Hill and two Asheville Police Officers.

v. Potts, 547 F.2d 800 (4th Cir. 1976) (affirming dismissal of 42 U.S.C. § 1983 action against retained counsel). Thus as this Court explained in the Order dismissing Plaintiff's previously filed § 1983 Complaint², this Complaint cannot be maintained against Plaintiff's appointed counsel Mr. Hill.

Next, Plaintiff also names the State of North Carolina s a defendant in this case. However, Plaintiff's allegations pertain only to his court-appointed counsel, Mr. Calvin Hill. Therefore, the State of North Carolina is not an appropriately named party to this lawsuit.

Based upon the foregoing, the instant Complaint is hereby **DISMISSED** for failure to state a claim upon which relief can be granted.

SO ORDERED.

Signed: March 30, 2006



Graham C. Mullen
United States District Judge



² See Document No. 3 in case 1:06cv38.