No._____

In The
Supreme Court Of The United States

DAVID DWAYNE CASSADY,

Petitioner,

V.

STEVEN D. HALL

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

MCNEILL STOKES
5372 Whitehall Place SE
Mableton, Georgia 30126
Telephone: 404-352-2144
Email: mcstokes@bellsouth.net
Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Does the United States District Court have jurisdiction under 42 USC §1983 to enforce its judgement by garnishment of indemnity proceeds of the Georgia Department of Administrative Services in accordance with a General Liability Agreement for funds owed to the Defendant when the State of Georgia has waived sovereign immunity for *ex contractu* actions?

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's decision, dated June 15, 2018, is set forth in the Appendix at A-1. The Order of the United States District Court for the Middle District of Georgia adopting the Magistrate Judge's Report and Recommendation, dated February 2, 2018, is set forth in the Appendix at A-2. The Magistrate Judge's Report and Recommendation, dated March 1, 2017 is set forth in Appendix A-3. The Judgment of the United States District Court for the Middle District of Georgia in favor of David Cassady, dated April 5, 2016, is set forth in the Appendix at A-4. The Order of the United States District Court for the Middle District of Georgia, dated August 8, 2014, is set forth in Appendix as A-5. The Report and Recommendation of the United States Magistrate Judge for the Middle District of Georgia, dated June 30, 2014 is set forth in Appendix as A-6.

JURISDICTION

The underlying United States District Court jurisdiction arising under 28 U.S.C. §1331 is based on federal law, 42 U.S.C. §1983, and the Eighth Amendment of the United States Constitution. The final judgment of the US Court of Appeals was rendered on June 15, 2018. The statutory provision conferring jurisdiction on the Supreme Court of the United States to review a decision of a United States Court of Appeal on a Writ of Certiorari is 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

Civil Rights Act, 42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE FACTS

Plaintiff Cassady is transsexual similar to the plaintiff in *Farmer v. Brennan,* 511 U.S. 825 (1994) and was physically and sexually attacked on October 15, 2010 by Defendant Steven D. Hall, who at the time was a corrections officer at Georgia Diagnostic and Classification Prison. Plaintiff filed a Complaint on January 21, 2014 (Docket #1) which was amended on May 12, 2014 (Docket #11). The case proceeded to trial and on April 5, 2016 United States District Court for the Middle District of Georgia pursuant to a jury verdict entered a judgment against the Defendant, Steven D. Hall, in *Cassady v. Hall*, Civil Action File No. 5:14-cv-25-MTT-MSH in the amount of $150,000 in compensatory damages and $50,000 in punitive damages (Docket #66, Appendix A-4).

The State of Georgia has agreed to pay indemnification of correctional officers of the Georgia Department of Corrections, including the Defendant pursuant to O.C.G.A. § 45-9-4 and the General Liability Agreement specifically states that the Department of Corrections is a covered party covering correctional officers: "DOAS will pay those sums that the Covered Party becomes legally obligated to as 'damages' because of 'bodily injury', 'property damage' and/or 'personal injury' to which this coverage applies." (Docket #74-1).

STATEMENT OF THE CASE

On April 5, 2016 United States District Court for the Middle District of Georgia Macon Division entered a judgment against the Defendant Steven Hall in *Cassady v. Hall*, Civil Action File No. 5:14-CV-25-MTT-MSH in the amount of $150,000 in compensatory damages and $50,000 in punitive damages (Docket #66, Appendix A-4). On June 17, 2016, Plaintiff filed a Motion for Garnishment against the Department of Administrative Services ("DOAS") as garnishee (Docket #68). The United States Magistrate Judge entered an Order on March 1, 2017 (Docket #84, Appendix A-3) denying the Plaintiff's Motion for Garnishment citing that the State of Georgia had not waived its sovereign immunity and that the DOAS's General Liability Agreement ("GLA") was not a property interest subject to garnishment by the Plaintiff. (Docket# 84, Appendix A-3).The United States District Court adopted the Magistrate Judge's decision (Docket #97, Appendix A-2).

On June 15, 2018 the United States Court of Appeals for the Eleventh Circuit issued an opinion citing that the district court had no jurisdiction to enforce its judgment under 42 USC §1983 by way of garnishment of indemnification proceeds of the Georgia Department of Administrative Services General Liability Agreement (GLS) that under its terms owed indemnity funds to the Defendant holding that "that garnishment actions are 'suits' under the Eleventh Amendment, Georgia has not waived its immunity to the type of garnishment Mr. Cassady seeks, and Congress has not clearly

abrogated the states' immunity to such garnishments."(Docket #102, Appendix A-1).

REASONS FOR GRANTING THE PETITION

The Supreme Court of the United States is urged to grant this Petition for Writ of Certiorari because The United States Court of Appeals for the Eleventh Circuit affirmed the United States District Court for the Middle District of Georgia (Docket # 102, June 15, 2018, Appendix A-1) that District Courts do not have jurisdiction to enforce their judgment in §1983 cases by way of garnishment of funds due the Defendant pursuant to an indemnification agreement agreed to by the State of Georgia which has waived sovereign immunity for contractual agreements. This case presents an important fundamental question of federal law, not settled by a previous decision of the Supreme Court of the United States that should be settled by the facts of this case determining whether a United States District Court can enforce §1983 cases redirecting by way of garnishment of funds owed the Defendant by an agency of the State of Georgia.

It is submitted that the United States District Court has jurisdiction to collect its judgments by way of garnishment of the Georgia Department of Administrative Services for the indemnity proceeds as contractually agreed to in its General Liability Agreement covering the Defendant's liability for civil rights violations as a corrections officer when the State of Georgia has waived sovereign immunity for liability of its contracts in the Constitution of the

State of Georgia (Ga. Const. art. 1, § II, para. IX(c)) and the indemnity proceeds are defined as property under federal (28 U.S.C. § 3205) and Georgia law (O.C.G.A. § 18-4-4 and O.C.G.A. § 44-1-1).

The Congress has decreed that sovereign immunity is waived for §1983 cases and the District Court's jurisdiction for §1983 cases is not lost in enforcing its judgment seeking funds of the Defendant in the hands of the State of Georgia. United States District Courts must be able to enforce their judgments in §1983 cases by way of garnishment when garnishment is an enforcement part of §1983 cases. The underlying case will have the chilling effect on §1983 civil rights cases if the judgments in 1983 cases cannot be enforced against indemnity agreements established by the states. To pay damages of its employees.

ARGUMENT AND CITATION OF AUTHORITY

THE UNITED STATES DISTRICT COURT HAS JURISDICTION UNDER 42 USC § 1983 TO ENFORCE ITS JUDGMENT BY GARNISHMENT OF THE INDEMNITY PROCEEDS OF THE GEORGIA DEPARTMENT OF ADMISTRATIVE IN ACCORDANCE WITH A GENERAL LIABILITY AGREEMENT FOR FUNDS OWED TO THE DEFENDANT WHEN THE STATE OF GEORGIA HAS WAIVED SOVERIGN IMMUNITY FOR EX CONTRACTU ACTIONS

This petition involves a fundamental issue of whether a United States District Court can enforce its judgment in a 42 USC §1983 case by way of garnishment of funds due the Defendant under a general liability agreement of the State of Georgia when the State of Georgia has waived sovereign immunity for contractual actions. The garnishment is not against the State of

Georgia funds but is against indemnify funds held by the State of Georgia owed to the Defendant which the Plaintiff seeks redirection in satisfaction of the District Court's judgment.

The District Court must be able to enforce its judgment particularly when the State of Georgia has contractually agreed to the payment of indemnity of the civil rights damages caused by the Defendant

It is axiomatic that the District Court having federal jurisdiction pursuant to the Civil Rights Act, 42 U.S.C. § 1983, that it also has jurisdiction to enforce its judgment against assets of the Defendant, including amounts owed to the Defendant as indemnity by Georgia Department of Administrative Services. Federal jurisdiction is conferred by 42 U.S.C. § 1983 which states that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

The garnishment procedure is provided for as a post-judgment remedy in 28 U.S.C. § 3205, as well as other writs of execution on a judgment in federal court. These procedures are integral for enforcement of judgments in federal courts. The Federal Rules of Civil

Procedure, Rule 69 provides for the execution of a money judgment that is integral to the Court's jurisdiction and providing:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

The Eleventh Circuit decision strains to fit this §1983 case into sovereign immunity. The Court recognizes that the "Eleventh Amendment of the United States Constitution bars *suits* against states in Federal Court unless the state has waived sovereign immunity or Congress has abrogated it…The Eleventh Amendment extends only to 'suits in law or equity'" (Slip Opinion pg. 4, Appendix A-1). The decision then ignores that Congress has abrogated sovereign immunity for § 1983 cases as well as further holding that the garnishment is a separate lawsuit as opposed to being an enforcement of the District Court's §1983 judgment. The Eleventh Circuit decision is erroneous in its conclusion that Federal Court jurisdiction is barred by The Eleventh Amendment baring District Courts jurisdiction to enforce its judgment with garnishment in §1983 judgments seeking to redirect funds owed to an individual Defendant by the State of Georgia. Congress has abrogated sovereign immunity for §1983 civil rights cases for over 140 years.

The State of Georgia has waived sovereign immunity and has contractually agreed to the payment of indemnity of the civil rights damages caused by the Defendant

The State of Georgia has waived sovereign immunity for *ex contractu* actions. The District Court's Order adopted the Magistrate Judge's Recommendation following the State's Response contending that the garnishment action is barred by the Eleventh Amendment because Georgia has not waived sovereign immunity for garnishment. However, the State has consented to the waiver of sovereign immunity and agreed to pay indemnification of correctional officers of the Georgia Department of Corrections, including the Defendant pursuant to O.C.G.A. § 45-9-4 and the GLA attached as "Exhibit A" to the State's Response which specifically states that the Department of Corrections is a covered party covering correctional officers: "DOAS will pay those sums that the Covered Party becomes legally obligated to as 'damages' because of 'bodily injury', 'property damage' and/or 'personal injury' to which this coverage applies." (Docket #74-1). Neither the Magistrates Judge's recommendation nor the adoption Order of the United States District Judge considered that Georgia has waived sovereign immunity for contract actions in their Constitution and that this action to enforce the indemnification provisions of correctional officers of the Georgia Department of Corrections which is a contract action.

The Supreme Court of Georgia recently reaffirmed in *Georgia Department of Labor v. RTT Assoc., Inc.*, 299 Ga. 78 (2016) that: "Pursuant to

Ga. Const. art. 1, § II, para. IX(c): The state's defense of sovereign immunity is hereby waived as to any action ex contractu for the breach of any written contract now existing or hereafter entered into by the state or its departments or agencies. O.C.G.A. § 50-21-1(a). *Georgia Department of Labor v. RTT Assoc., Inc.*, 299 Ga. 78, 80-81 (2016) also states that "The Georgia Constitution, § II, para. IX(c) addresses the waiver of the state's immunity from liability for breach of contract as follows:

> (c) The state's defense of sovereign immunity is hereby waived as to any action ex contract for the breach of any written contract now existing or hereafter entered into by the state or its departments and agencies.

The Court of Appeals of Georgia also recently reaffirmed in *Fulton County v. Soco Contr. Co., Inc. 343 Ga App. 889 (2017)* that sovereign immunity has been constitutionally waived in Georgia for contract matters and that "whether sovereign immunity has been waived under the undisputed facts of this case is a question of law and this Court's review is de novo." *Id* at 893.

Liability covered under a self-insurance program also waives sovereign immunity under the extent of such coverage. *Gilbert v. Richardson,* 211 Ga. App. 795 (1994). The State's self-insurance risk management fund indemnifies and covers the Defendant in this instant case is similar to *Mims v. Clanton,* 22 Ga. App. 657 (1996) in which a "risk management fund" for the investigation and defense of tort claims was held to be a self – insurance plan

constituting liability insurance which waived sovereign immunity within the meaning of the former provisions of Ga. Const. §1983, Art. I, Sec. II, Para. IX.

The Supreme Court of Georgia held in *Price v. Department of Transp.* of Georgia, 257 Ga. 535, (1987) that the State, by purchasing liability insurance covering employees of Department of Transportation waived sovereign immunity from suit for those employees' negligence, to extent it provided insurance, if employees are made party defendants, despite fact that Department of Transportation was not named as insured.

The Eleventh Circuit decision parses the plain language of Georgia waiver of sovereign immunity for contract actions holding that the waiver of sovereign immunity only applies in Georgia courts and not in Federal courts when there is no such provision in Georgia's waiver of sovereign immunity in the Georgia Constitution.

Indemnity Proceeds are defined as property under Federal and Georgia State Law

Pursuant to 28 U.S.C. § 3205, a court may issue a writ of garnishment against property including nonexempt disposable earnings which the debtor has a substantial nonexempt interest and which is in possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Certainly, an insured has a substantial interest in the vested right to receive indemnity proceeds which under 28 U.S.C. § 3205 that

would include insurance proceeds as property, and therefore meets the definition of property subject to garnishment.

Included in the Federal Debt Collection Procedures Act ("FDCPA") is 28 U.S.C. § 3002(12) which is the statute that defines property applicable to 28 U.S.C. § 3205. "Property" is defined as "any present or future interest, whether legal or equitable…tangible or intangible, vested or contingent, wherever located and however held…" This broad definition of property would include the right of the Defendant to receive indemnity proceeds to which he has a vested contractual right to receive from the garnishee. Under this statutory definition, property is defined not just as tangible objects, but also as an intangible right. Therefore, the Defendant's intangible contractual right to receive money constitutes property within the definition of 28 U.S.C. § 3205.

The garnishment procedure is provided for as a post-judgment remedy in 28 U.S.C. § 3205, as well as other writs of execution on a judgment in federal court. These procedures are integral for enforcement of judgments in federal courts. The Federal Rules of Civil Procedure, Rule 69 provides for the execution of a money judgment following state law that is integral to the Court's jurisdiction and providing:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where

> the court is located, but a federal statute governs to the extent it applies.

Georgia law provides a broad definition which includes "all obligations accruing from the garnishee to the defendant" would extend to indemnity proceeds:

> "All obligations owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all obligations accruing from the garnishee to the defendant throughout the garnishment period shall be subject to garnishment." O.C.G.A. § 18-4-4.

Further, O.C.G.A. § 44-1-1 defines property to include "1) Realty and personality which is actually owned; 2) The right of ownership of realty or personality; and 3) that which is subject to being owned and enjoyed." The definition of property in the aforementioned statute has been interpreted by *Clark v. Great American Insurance Company of New York*, 387 F.2d 710, 715 (5th Cir., 1967) to be broad and "used not only to signify things real and personally owned but also to designate the right of ownership of that which is subject to be owned and enjoyed.

CONCLUSION

United States District Courts must be able to enforce their judgments in §1983 cases for which Congress had abrogated sovereign immunity especially in collection of the judgment directly against indemnity proceeds by garnishment is an appropriate remedy because the State of Georgia has waived sovereign immunity for contract actions.

This 28th day of August 2018.

Respectfully submitted,

_____

McNeill Stokes
Attorney for Petitioner
David Dwayne Cassady

5372 Whitehall Pl SE
Mableton, GA 30126
Tel: 404-352-2144
Email: mcstokes@bellsouth.net

No._____

In The
Supreme Court Of The United States

DAVID DWAYNE CASSADY,

Petitioner,

V.

STEVEN D. HALL

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPENDIX

MCNEILL STOKES
5372 Whitehall Place SE
Mableton, Georgia 30126
Telephone: 404-352-2144
Email: mcstokes@bellsouth.net
Attorney for Petitioner

Decision of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's decision, June 15, 2018

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10667
Non-Argument Calendar

D.C. Docket No. 5:14-cv-00025-MTT-MSH

DAVID WAYNE CASSADY,

Plaintiff – Appellant,

versus

STEVEN HALL,
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES,

Defendants – Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(June 15, 2018)

Before TJOFLAT, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

David Cassady appeals the District Court's denial of his motion for garnishment against the Georgia Department of Administrative Services ("GDAS"). We hold that garnishment actions are "suits" under the Eleventh Amendment, Georgia has not waived its immunity to the type of garnishment Mr. Cassady seeks, and Congress has not clearly abrogated the states' immunity to such garnishments. We accordingly affirm the District Court's denial of the motion.

I.

On January 21, 2014, Mr. Cassady, a Georgia inmate, brought suit against Mr. Hall, a state corrections officer, pursuant to 42 U.S.C. § 1983. Mr. Cassady alleged that in October 2010, Mr. Hall physically and sexually attacked him in the Georgia Diagnostic and Classification Prison, where Mr. Cassady was an inmate and Mr. Hall was a corrections officer. The case proceeded to trial, and a jury found in favor of Mr. Cassady. The jury awarded him $150,000 in compensatory damages and $50,000 in punitive damages. The District Court rendered judgment in accordance with the jury's verdict.

Thereafter, Mr. Cassady moved the District Court to issue a writ of garnishment ordering the State of Georgia to redirect to him the funds he argues are due to be paid to Mr. Hall under Georgia's General Liability Agreement ("GLA"), which he says gives state employees like Mr. Hall a right of

indemnification for judgments arising out of the performance of their official duties. As statutory authority for the writ of garnishment, Mr. Cassady cited 28 U.S.C. § 3205 or, alternatively, Federal Rule of Civil Procedure 69.[1] Mr. Cassady argued that these federal sources authorize district courts to issue writs of garnishment. Moreover, Mr. Cassady averred, Georgia has, in its Constitution, waived sovereign immunity in contract actions against the State; thus, because the GLA is a contract between the State and its employees, sovereign immunity is waived as to the garnishment of Mr. Hall's contractual entitlement to indemnification.

The District Court denied the motion on the ground that Georgia has not waived sovereign immunity with respect to garnishment actions, and, alternatively, that Mr. Hall's indemnification rights (if any) under the GLA do not constitute a

[1] In relevant part, § 3205 states:

> A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor.

Id. § 3205(a). Federal Rule of Civil Procedure 69 states:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Fed. R. Civ. P. 69(a).

"property interest" as that term is defined under § 3205. Mr. Cassady timely appealed.

II.

We review the District Court's legal conclusions *de novo*. *E.g.*, *Mitchell v. Farcass*, 112 F.3d 1483, 1486 (11th Cir. 1997). The Eleventh Amendment of the United States Constitution bars suits against states in federal court unless a state has waived its sovereign immunity or Congress has abrogated it. *Nichols v. Ala. State Bar*, 815 F.3d 726, 731 (11th Cir. 2016) (per curiam). This bar includes state agencies and other arms of the state.[2] *Robinson v. Ga. Dep't of Transp.*, 966 F.2d 637, 638–40 (11th Cir. 1992). With respect to congressional abrogation, a federal statute will not be read to abrogate a state's sovereign immunity unless Congress has made its intention to do so "unmistakably clear" in the language of the statute. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242, 105 S. Ct. 3142, 3147 (1985).

As an initial matter, that Mr. Cassady sought garnishment in a document styled as a motion, rather than as a separate lawsuit naming the State of Georgia as a defendant, has no bearing on the sovereign immunity inquiry. The Eleventh Amendment extends only to "*suits* in law or equity." (Emphasis added). However, the Supreme Court has instructed us to eschew a formalistic reading of

[2] In his brief, Mr. Cassady does not argue that GDAS, a state agency, is not an arm of the State.

the term "suit" when considering whether the Eleventh Amendment protects its sovereign immunity. Instead, we are to look to "the essential nature and effect of the proceeding." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 277, 117 S. Ct. 2028, 2038 (1997) (quotation omitted). Long ago, Chief Justice Marshall elaborated on this inquiry. He remarked: "What is a suit? We understand it to be the prosecution, or pursuit, of some claim, demand, or request." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 407 (1821).

In the action below, Mr. Cassady sought an order from the District Court under the auspices of federal law requiring the State of Georgia to redirect money to him that it would otherwise pay to Mr. Hall, in accordance with a contract under Georgia law to which Mr. Cassady was not a party. And the District Court would do this although the State of Georgia was not a party to Mr. Cassady's suit against Mr. Hall. In form and function, the "essential nature and effect" of the motion was to coerce the State to alter the terms of its contract with Mr. Hall so that it paid money it owed him to Mr. Cassady instead. This is certainly "prosecution . . . of some claim, demand, or request." Hence, the motion falls within the Eleventh Amendment's embrace.[3]

[3] In *Carpenters Pension Fund of Baltimore, Md. v. Md. Dep't of Health & Mental Hygiene*, 721 F.3d 217 (4th Cir. 2013), the Fourth Circuit addressed the question of whether a motion for a writ of garnishment brought in federal court under Rule 69 (by way of Maryland "practice and procedure") to attach the property of a state to satisfy a debt was a "suit" under the Eleventh Amendment. The Court concluded that the motion fell within the Eleventh

Accordingly, Georgia is immune from such actions unless it has given federal courts permission to entertain garnishment actions against it. It has not done so. Under the Georgia Constitution, the State's sovereign immunity "can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." Ga. Const. art. I, § II. There is no act that expressly waives Georgia's immunity to the type of garnishment Mr. Cassady seeks.[4] The only Georgia statute authorizing garnishment of State funds permits garnishments to recover "[m]oney due officials or employees of a municipal corporation or county of this state or of the state

---

Amendment's definition of "suits in law or equity," and thus that the District Court lacked jurisdiction to issue the writ. *Id.* at 225–26.

In reaching this conclusion, the Court noted that the motion was identical to an adversarial lawsuit against the State in both procedural and substantive aspects. Procedurally, the Court explained that a writ of garnishment "resembles a conventional 'suit'" in that it "commences upon the issuance of a writ, at which point the garnishee must file an answer admitting or denying indebtedness and asserting any applicable defenses" within the same timeframe as "with answering a complaint in a civil action." *Id.* at 223 (citations omitted). Further, a proposed "garnishee who fails to file an answer to the writ risks default judgment." *Id.* Moreover, the Court observed, "the underlying garnishment action satisfies the substantive criteria of a 'suit' because it demands recovery from the state treasury." *Id.* at 224. Thus, the Court remarked that it was "not surprising that Maryland courts have designated garnishment actions as separate cases, even though filed in the underlying action." *Id.* at 223 (quotation omitted).

We agree with the Fourth Circuit's approach, and we find that the garnishment motion requested in the instant case fits these criteria as well. Like Maryland, Georgia treats a garnishment action "ancillary to the main action" as "a distinct suit against a separate party, and for an entirely new cause of action." *Dent v. Dent*, 45 S.E. 680, 680 (Ga. 1903). And like in garnishment actions under Maryland law, Georgia would be required to respond to the application for a writ of garnishment or else default and be ordered to pay the funds to Mr. Cassady.

[4] In the District Court, the parties disagreed as to whether Mr. Hall is entitled to indemnification under the GLA in the first place. Because we hold that the District Court lacked jurisdiction to issue the writ of garnishment, we state no view on this question of state law.

government, or any department or institution thereof, *as salary for services performed* for or on behalf of the municipal corporation or county of this state or the state, or any department or institution thereof." O.C.G.A. § 18-4-26(a) (emphasis added). This statute makes no mention of ordering garnishment of state funds paid to a state employee under an indemnification agreement for the purposes of securing a third party's judgment.

Further, the statute restricts jurisdiction over such actions to "a court located in the county in which the warrant is drawn on the treasury of the government or in which the check is issued for the salary due the official or employee of the state or its political subdivisions." *Id.* § 18-4-26(b). It says nothing about the federal courts; thus, even if the statute could be read to waive Georgia's sovereign immunity for such purposes, it does not indicate that it waives the State's immunity in federal court. *See Schopler v. Bliss*, 903 F.2d 1373, 1379 (11th Cir. 1990) (per curiam) ("Evidence that a state has waived sovereign immunity in its own courts is not by itself sufficient to establish waiver of Eleventh Amendment immunity from suit in federal court."). The same is true of Georgia's waiver of its sovereign immunity in contract actions: this Court has already held that Georgia's decision to allow contract actions against it in state court did not extend its waiver of sovereign immunity to contract suits in federal court. *Barnes v. Zaccari*, 669 F.3d 1295, 1308 (11th Cir. 2012).

Nor has Congress clearly abrogated Georgia's immunity to garnishment actions. 28 U.S.C. § 3205, a provision in the Federal Debt Collection Procedures Act, authorizes only writs of garnishment sought *by the United States* to collect a judgment. *See* 28 U.S.C. § 3001(a)(1) (stating that the chapter including § 3205 "provides the exclusive civil procedures *for the United States* . . . to recover a judgment on a debt" (emphasis added)); *see also* § 3205(c)(3) (requiring the United States to serve the garnishee and the judgment debtor with a copy of the writ of garnishment in all garnishment applications brought under § 3205). The United States is not a party to Mr. Cassady's suit. Therefore, by the plain terms of the statutory scheme of which it is part, § 3205 has no applicability to the instant case. It thus cannot provide any basis for abrogation. Neither can Federal Rule of Civil Procedure 69. Rule 69 provides:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Fed. R. Civ. P. 69(a).

Here, no statute of the United States supplies authority for the District Court to order garnishment of indemnification funds paid by a state to its employees. Additionally, as discussed, Georgia law does not supply a "practice and procedure" that would afford the District Court a basis upon which to garnish the State as part

of its writ of execution. And Rule 69 cannot provide a standalone basis for a writ of garnishment under such circumstances: the Rules Enabling Act expressly prohibits the Federal Rules of Civil Procedure from abridging, enlarging, or modifying any substantive rights. 28 U.S.C. § 2072. This, of course, includes a state's substantive rights vis-à-vis sovereign immunity. Therefore, the District Court lacked jurisdiction to grant Mr. Cassady's motion for garnishment. If he is entitled to a lien of garnishment, Mr. Cassady must file an action in a Georgia court. *See* O.C.G.A. § 18-4-26.

We accordingly affirm the District Court's denial of the motion for garnishment.

AFFIRMED.

The Order of the District Court for the Middle District of Georgia adopting the Magistrate Court's Report and Recommendation, February 2, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID DWAYNE CASSADY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION NO. 5:14-CV-25 (MTT)**
	)	
STEVEN D. HALL,	)	
	)	
Defendant.	)	
	)	

ORDER

United States Magistrate Judge Stephen Hyles recommends denying the Plaintiff's motion for garnishment (Doc. 68). Doc. 84. The Plaintiff has objected to the Recommendation. Docs. 85; 94.[1] Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Plaintiff's objections and has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects. The Court has reviewed the Recommendation and accepts the findings, conclusions, and recommendations of the Magistrate Judge. Accordingly, the Recommendation is **ADOPTED** and made the order of this Court, and the motion for garnishment (Doc. 68) is **DENIED**.

SO ORDERED, this 2nd day of February, 2018.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

[1] The Magistrate Judge originally erroneously styled his Recommendation an Order. Doc. 84. The Plaintiff noticed appeal, and the Eleventh Circuit dismissed the appeal for lack of jurisdiction because the Magistrate Judge's Recommendation had not been rendered final by the Court. Docs. 88; 93.

Report and Recommendation of United States Magistrate Judge for the Middle District of Georgia, March 1, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID DWAYNE CASSADY,	:	
	:	
Plaintiff,	:	
	:	NO. 5:14-CV-0025-MTT-MSH
v.	:	
	:	
STEVEN D. HALL,	:	
	:	
Defendant.	:	

_____

ORDER

On April 5, 2016, the Court entered judgment on behalf of Plaintiff David Dwayne Cassady against Defendant Steven D. Hall in the amount of $150,000.00 in compensatory damages and $50,000.00 in punitive damages after a jury returned a verdict in Plaintiff's favor. J., Apr. 5, 2016, ECF No. 66. On June 17, 2016, Plaintiff filed a motion for garnishment against Defendant naming the Department of Administrative Services, State of Georgia (Department) as garnishee (ECF No. 68). Plaintiff contends that there is a General Liability Agreement in effect that gives Defendant a right of indemnification for suits and resulting judgments arising out of the performance of his official duties as a correctional officer employed by the Georgia Department of Corrections. Pl.'s Mot. for Garnishment, ECF No. 68. The Court ordered Plaintiff to perfect service over the garnishee on October 18, 2016. Order 1, Oct. 18, 2016, ECF No. 71. After being served, the Department filed a response asserting Eleventh Amendment immunity from suit, lack

of federal jurisdiction, and exclusion from coverage under the terms of the indemnity agreement for intentional acts (ECF No. 74).

The Georgia Constitution provides that the State's sovereign immunity can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is waived and the extent of the waiver. Ga. Const. Art. I, Sec. II, Para. IX(e). For proceedings in garnishment actions, the General Assembly waived sovereign immunity only as to salaries for services performed for or on behalf of municipal corporations, counties, the state itself or its departments. O.C.G.A. § 18-4-26. Plaintiff does not seek to garnish Defendant's salary. Rather, he seeks to garnish what he contends is Defendant's right to be indemnified by the Department based on the General Liability Agreement. The State of Georgia has not waived its immunity from suit under the Eleventh Amendment for Plaintiff's claims and his motion for garnishment must be denied.

Moreover, garnishments are authorized under 28 U.S.C. § 3205 against property in which a debtor has a substantial nonexempt property interest. Plaintiff has failed to show that Defendant has a property interest subject to garnishment in the General Liability Agreement between the Department and the Georgia Department of Corrections. The General Liability Agreement is an intergovernmental contract to which Defendant is not a party. It is between governmental entities. Ga. Const. 1983 Art. IX, Sec. III, Para.1. Therefore, it cannot be characterized as a property interest or right subject to garnishment by Plaintiff.

For the reasons set forth herein, Plaintiff's motion for garnishment is denied.

SO ORDERED, this 1st day of March, 2017.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE

United States District Court for the Middle District of Georgia judgment in favor of David Cassady, April 5, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID DWAYNE CASSADY, *

Plaintiff, *

v. Case No. 5:14-CV-25-MTT-MSH

*

STEVEN D. HALL and KEITH EUTSEY,

*

Defendants.

*

JUDGMENT

Pursuant to this Court's [19] Order dated August 8, 2014, and for the reasons stated therein,

JUDGMENT is hereby entered dismissing Defendant Keith Eutsey from this case. Plaintiff shall recover nothing of Defendant Keith Eutsey.

Pursuant to the jury verdict dated April 4, 2016 as to Defendant Steven D. Hall and for the reasons stated therein,

JUDGMENT is hereby entered in favor of Plaintiff in the amount of $150,000.00 compensatory damages and in the amount of $50,000.00 in punitive damages against Defendant Steven D. Hall. The amounts shall accrue interest from the date of entry of judgment at the rate of 0.62 % per annum until paid in full. Plaintiff shall also recover costs of this action from Defendant Steven D. Hall.

This 5th day of April, 2016.

David W. Bunt, Clerk

s/ Cheryl M. Alston, Deputy Clerk

Order of the United States District Court for the Middle District of Georgia,
August 8, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID DWAYNE CASSADY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION NO. 5:14-CV-25 (MTT)**
	)	
STEVEN D. HALL,	)	
	)	
Defendant.	)	
	)	

ORDER

Before the Court is the Report & Recommendation of Magistrate Judge Stephen Hyles. (Doc. 16). Following a preliminary screening of the Plaintiff's amended complaint (Doc. 11) under 28 U.S.C. § 1915A, the Magistrate Judge recommends the Court dismiss the Plaintiff's Eighth Amendment claim against Defendant Keith Eutsey.

The Plaintiff filed an objection to the Magistrate Judge's Recommendation. (Docs. 17). Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Plaintiff's objection and made a de novo determination of the portions of the Recommendation to which the Plaintiff objects. Even if a prisoner's letter to supervisory officials reporting an assault at the hands of a guard can be a sufficient basis for the supervisor's liability, the facts as currently alleged by the Plaintiff in this case are insufficient. The Plaintiff's allegations do not show a causal connection between Eutsey's alleged inaction and the Plaintiff's assault or that Eutsey actually knew the Plaintiff was exposed to a substantial risk of serious harm and was deliberately indifferent to the risk he faced.

Accordingly, the Recommendation is **ADOPTED** and made the **ORDER** of the Court. The Plaintiff's Eighth Amendment claim against Defendant Eutsey is **dismissed without prejudice**.

SO ORDERED, this 8th day of August, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

Report and Recommendation of the United States Magistrate Judge for the Middle District of Georgia, June 30, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID DWAYNE CASSADY,	:	
	:	
Plaintiff	:	
	:	NO. 5:14-CV-0025 -MTT-MSH
VS.	:	
	:	
STEVEN D. HALL,	:	
	:	
Defendant	:	
	:	

REPORT AND RECOMMENDATION

Plaintiff **DAVID DWAYNE CASSADY**, a state prisoner currently confined at Johnson State Prison, in Wrightsville, Georgia, filed a *pro se* civil rights complaint in this Court seeking relief under 42 U.S.C. § 1983. After conducting a preliminary review of Plaintiff's Complaint, the undersigned ordered that service be made on Defendant Steven Hall. Plaintiff has now filed an Amended Complaint (EFC No. 11) in which he attempts to add a new claim and party. The undersigned has thus conducted a preliminary review of the new allegations in Plaintiff's Amended Complaint and hereby **RECOMMENDS** that Plaintiff's Eighth Amendment claim against Keith Eutsey be **DISMISSED** without prejudice, pursuant to 28 U.S.C. § 1915A(b)(1), for failure to state a claim.

STANDARD OF REVIEW

When conducting a preliminary screening pursuant to 28 U.S.C. § 1915A(a), the district court must accept all factual allegations in the complaint as true. *Brown v.*

Johnson, 387 F.3d 1344, 1347 (11th Cir. 2004). Pro se pleadings, like the one in this case, are also "held to a less stringent standard than pleadings drafted by attorneys" and must be "liberally construed" by the court. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). However, a pro se prisoner's pleading is still subject to dismissal prior to service if the district court finds that the complaint –when viewed liberally and in the light most favorable to the plaintiff – is frivolous or malicious, seeks relief from an immune defendant, or otherwise fails to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915A(b).

A complaint fails to state a claim when it does not include "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). To state a cognizable claim, the allegations in the complaint must also do more than "merely create[] a suspicion [of] a legally cognizable right of action." Id. at 555; *see also, Marsh v. Butler County, Ala.*, 268 F.3d 1014, 1037 (11th Cir. 2001) (en banc) (citation omitted) ("Pleadings must be something more than an ingenious academic exercise in the conceivable."). "Threadbare recitals of the elements of cause of action, supported by mere conclusory statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). To survive preliminary review, a prisoner's complaint must "raise the right to relief above the speculative level" by alleging facts which create "a reasonable expectation" that discovery will reveal the evidence necessary to prove a claim. *See Twombly*, 550 U.S. at 555-556.

ANALYSIS OF CLAIMS

This action arises of out an alleged series of sexual assaults by a prison guard, Defendant Steven Hall. The undersigned previously considered Plaintiff's allegations against Hall and ordered that service be made on this defendant. Plaintiff now attempts to bring a claim against Hall's supervisor, Deputy Warden of Security Keith Eutsey.

The Amended Complaint alleges that, while employed as a corrections officer at the Georgia Diagnostic and Classification Prison (GDCP), Defendant Hall was arrested for driving under the influence (DUI) and deposit account fraud.[1] Plaintiff believes that Defendant Eutsey was aware of these arrests and allowed Hall to continue his employment at GDCP. The Complaint also alleges that Plaintiff mailed a letter to Eutsey on November 1, 2011, informing him of Hall's sexual assaults, but Eutsey failed to take any action in response. Plaintiff thus seeks to hold Eutsey liable for his alleged failure to supervise Hall and/or protect Plaintiff from Hall's sexual assaults.

A prisoner, however, cannot state a § 1983 claim based upon a theory of respondent superior or vicarious liability. *Miller v. King*, 384 F.3d 1248, 1261 (11th Cir. 2004). "The standard by which a supervisor is held liable in his individual capacity for the actions of a subordinate is extremely rigorous." *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003) (quotation marks and alteration omitted). To state a claim against a supervisory official, a prisoner must allege facts showing either that the supervisor personally participated in the alleged constitutional violation or that there is a causal connection

1 Plaintiff also alleges that Hall was arrested twice in 2013 and once in 2014. These arrests do not appear relevant to Plaintiff's claims, however, as they occurred after the events giving rise to this action.

between the actions of the supervising official and the alleged constitutional deprivation. *H.C. by Hewett v. Jarrard*, 786 F.2d 1080, 1086-87 (11th Cir. 1986). This may be done by alleging that the officials either "(1) instituted a custom or policy which resulted in a violation of the plaintiff's constitutional rights; (2) directed his subordinates to act unlawfully; or (3) failed to stop his subordinates from acting unlawfully when he knew they would." *Gross v. White*, 340 F. App'x 527, 531 (11th Cir. July 17, 2009) (citing *Goebert v. Lee County*, 510 F.3d 1312, 1331 (11th Cir. 2007)). Plaintiff's Amended Complaint does not include any such allegations. Plaintiff's conclusory statement that Eutsey failed to properly supervise and control his subordinates does not state a claim under § 1983. *See Salas v. Tillman*, 162 F. App'x 918, 922 (11th Cir. 2006).

The allegations in Plaintiff's Amended Complaint are also not sufficient to state an Eighth Amendment claim for failure to protect. Prison officials do, of course, "have a duty . . . to protect prisoners from violence." *Farmer v. Brennan*, 511 U.S. 825, 833, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). "An Eighth Amendment violation will occur when a substantial risk of serious harm, of which the official is subjectively aware, exists and the official does not 'respond[] reasonably to the risk[.]'" *Carter v. Galloway*, 352 F.3d 1346, 1349 (11th Cir. 2003) (cites omitted). Plaintiff's Complaint, however, does not allege any facts suggesting that Eutsey was subjectively aware of a substantial risk of serious harm in this case. Hall's prior DUI and deposit account fraud would not have put Eutsey on notice of a propensity to commit sexual assaults.

Plaintiff's allegation that Eutsey failed to respond to his letter in November of 2011 likewise fails to support an Eighth Amendment claim. A supervisor is not "personally

involved" in a constitutional violation merely because he fails to respond to a prisoner's letter. *See Walker v. Pataro*, No. 99CIV.4607, 2002 WL 664040, at *12 (S.D.N.Y. Apr. 23, 2002); *see also, Ware v. Owens*, No. CV612–056, 2012 WL 5385208, at * 2 (S.D. Ga. Sept. 28, 2012); ("failure to respond to an inmate's letters does not result in a violation of that inmate's constitutional rights"). "Liability under § 1983 must be based on affirmative unconstitutional behavior and cannot be based upon a mere failure to act." *Way v. McNeil*, No. 5:10cv107, 2012 WL 1463412, at * 4 (N.D. Fla. Mar. 8, 2012).

CONCLUSION

For these reasons, the undersigned concludes that Plaintiff has failed to state an Eighth Amendment claim against Defendant Eutsey; and it is **RECOMMENDED** that Keith Eutsey be **DISMISSED** from this action. Plaintiff may serve and file written objections to these recommendations with the district judge to whom this case is assigned within fourteen days after being served a copy of this Order. *See* 28 U.S.C. § 636(b)(1).

SO RECOMMENDED, this 30th day of June 2014.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE

No._____

In The
Supreme Court Of The United States

DAVID DWAYNE CASSADY,

Petitioner,

V.

STEVEN D. HALL,

Respondent.

CERTIFICATION OF WORD COUNT

As required by Supreme Court Rule 33.1, I certify that the Petitioner's Petitioner for Writ of Certiorari contains 3,424 words in New Century School Book 12 point type, excluding the parts of the document that are exempted by Supreme Court Rule 33.1 (d).

I declare under penalty of perjury that the foregoing is true and correct.

This 28th day of August, 2018.

McNeill Stokes
Attorney for Petitioner
5372 Whitehall Pl SE
Mableton, Georgia 30126
Telephone: 404-352-2144

No._____

In The
Supreme Court Of The United States

DAVID DWAYNE CASSADY,

Petitioner,

V.

STEVEN D. HALL,

Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the date of filing that the forgoing Petition for Writ of Certiorari with Corrected Appendix and Motion for Leave to Proceed In Forma Pauperis was served by placing in the United States mail, with adequate postage prepaid and addressed to:

Brook E. Heinz
Office of Attorney General
State of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This 7th day of September, 2018.

McNeill Stokes
Attorney for Petitioner
5372 Whitehall Pl SE
Mableton, Georgia 30126
Telephone: 404-352-2144