FILED: December 21, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6825
(0:16-cv-02440-JMC)

DAWUD RAHIM

Plaintiff - Appellant

v.

THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

PER CURIAM:

Dawud Rahim appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 (2012) complaint under 28 U.S.C. § 1915A(b) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Rahim v. SC Dep't of Prob.*, No. 0:16-cv-02440-JMC (D.S.C. June 7, 2017). We deny Rahim's motion to amend. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Dawud Rahim, Plaintiff, v. The South Carolina Department of Probation, Parole and Pardon Services, Defendant.	)	Civil Action No.: 0:16-02440-JMC **ORDER**

This matter is before the court upon review of Magistrate Judge Paige J. Gossett's Report and Recommendation ("Report"), filed on August 29, 2016, recommending that Plaintiff Dawud Rahim's *pro se* 42 U.S.C. § 1983 action be summarily dismissed for failure to sue a party that is amenable to suit. (ECF No. 16.) This review considers Plaintiff's objections to the Magistrate Judge's Report, filed September 19, 2016. (ECF No. 18.)

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report to which specific objections are made.

Plaintiff was advised of the right to file objections to the Report. (ECF No. 16.) In his timely Response to the Report, Plaintiff specifically objected to the Magistrate Judge's recommendation that the Complaint be dismissed for lack of jurisdiction. (ECF No. 18 at 4.)

The court has conducted a *de novo* review of the issues in this case and concludes that the

Magistrate Judge has properly applied the applicable law. The court specifically reviewed those conclusions of the Magistrate Judge which were mentioned in Plaintiff's objections.

The Magistrate Judge properly determined that this court should dismiss Plaintiff's Complaint because this court does not have jurisdiction over a suit against a state agency. (ECF No. 16 at 3-4.) The Eleventh Amendment bars suits by citizens against non-consenting states brought either in state or federal court. See Alden v. Maine, 527 U.S. 706, 712-13 (1999). Such immunity extends to arms of the state, including a state's agencies, instrumentalities, and employees. Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997) ("It has long been settled that [the Eleventh Amendment's] reference to 'actions against one of the United States encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities"). Unless a state has consented to suit or Congress has waived a State's immunity pursuant to the Fourteenth Amendment, a state (and its agencies) may not be sued in federal or state court. Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989). Congress has not abrogated the states' sovereign immunity under § 1983, Quern v. Jordan, 440 U.S. 332, 343 (1979), and South Carolina has not consented to suit in federal district court. S.C. Code Ann. § 15-78-20(e) (2017). The South Carolina Department of Probation, Parole, and Pardon Services is a State agency. S.C. Code Ann. § 24-21-10 (2017); see Graham v. Webber, 2016 U.S. Dist. LEXIS 12290, at *10-11 (D.S.C. Jan. 7, 2016) (holding that members of the South Carolina Department of Probation, Parole, and Pardon Services are entitled to Eleventh Amendment immunity).

Plaintiff specifically objected to the Magistrate Judge's recommendation that the Complaint be dismissed for jurisdictional reasons. (ECF No. 18 at 4.) Defendant cites Harlow v. Fitzgerald, 457 U.S 800 (1982), for the proposition that the Eleventh Amendment does not bar a

state agency from being sued. (ECF No. 18 at 4.) However, Harlow does not involve a state agency, but instead involves a claim for qualified immunity on the part of top White House aides from the Nixon administration. Harlow, 457 U.S. at 802. Defendant has thus not cited any relevant legal authority to contradict the Magistrate Judge's conclusions. As the court does not have jurisdiction over Defendant, the court agrees with the Magistrate Judge and concludes that the Complaint should be dismissed.[1]

Based on the aforementioned reasons and a thorough review of the Magistrate Judge's Report, the court **ADOPTS IN PART** the Report (ECF No. 16) to the extent that it recommends dismissing Plaintiff's Complaint and **REJECTS IN PART** the Report to the extent that it recommends dismissing the Complaint without prejudice and without issuance and service of process.[2] Accordingly, the court **DISMISSES** the Complaint (ECF No. 1) with prejudice and without issuance and service of process.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

June 6, 2017
Columbia, South Carolina

[1] The court notes that Plaintiff raised other substantive claims in his Complaint and that he specifically objected to the Magistrate Judge's analysis of those claims. However, as the court does not have jurisdiction over Defendant, the court need not analyze any other substantive claims. See Vt. Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 778-79 (2000) ("[I]f there is no jurisdiction, there is no authority to sit in judgment of anything else.")

[2] The court notes that cases dismissed for lack of subject matter jurisdiction usually do so with prejudice, as plaintiffs cannot redraft their complaints to overcome sovereign immunity. See Cunningham v. General Dynamics Info. Tech., Inc., 2017 U.S. Dist. LEXIS 66094, at *17-18 (E.D. Va. May 1, 2017) (collecting cases).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dawud Rahim, Plaintiff, v. The South Carolina Department of Probation, Parole and Pardon Services, Defendant.	)	C/A No. 0:16-2440-JMC-PJG **REPORT AND RECOMMENDATION**

The plaintiff, Dawud Rahim, a self-represented state prisoner, brings this civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). Having reviewed the Complaint in accordance with applicable law, the court concludes that it should be summarily dismissed without prejudice and without issuance and service of process.

I. Procedural Background

Rahim is a state inmate at the Allendale Correctional Institution. (ECF No. 1 at 2.) Rahim indicates that he was granted parole on December 10, 2014, but it was rescinded on February 18, 2015, before he was released. (Id. at 6-7.) He claims his parole was rescinded because of a psychological evaluation conducted by an unlicensed psychologist. (Id. at 5, 9.) Rahim asserts the defendant violated his right to due process by rescinding his parole in an arbitrary and capricious manner and without probable cause. (Id. at 4.) He also claims the parole rescission constituted a breach of contract that caused him emotional distress and mental anguish. (Id. at 5-7.) He seeks $10,560,000 in punitive damages and release from prison. (Id. at 6.)

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II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

The Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted," "is frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief."[1] 28 U.S.C. § 1915(e)(2)(B). A finding of frivolousness can be made where the complaint "lacks an arguable basis either in law or in fact." Denton, 504 U.S. at 31. Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. Neitzke, 490 U.S. 319; Allison v. Kyle, 66 F.3d 71 (5th Cir. 1995).

This court is required to liberally construe *pro se* complaints. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, id.; Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is

[1] Screening pursuant to § 1915A is subject to this standard as well.

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charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff's allegations are assumed to be true. Erickson, 551 U.S. at 93 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)).

Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions"). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

B. Analysis

1. Immunity

Rahim's Complaint should be summarily dismissed because the defendant is immune from suit as a state agency. See § 1915(e)(2)(B)(iii). The Eleventh Amendment bars suits by citizens against non-consenting states brought either in state or federal court. See Alden v. Maine, 527 U.S. 706, 712-13 (1999); Seminole Tribe of Fl. v. Florida, 517 U.S. 44, 54 (1996); Hans v. Louisiana, 134 U.S. 1 (1890). Such immunity extends to arms of the state, including a state's agencies,

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instrumentalities and employees. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101-02 (1984); see also Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997); Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). While sovereign immunity does not bar suit where a state has given consent to be sued, or where Congress abrogates the sovereign immunity of a state, neither of those exceptions applies in the instant case.[2] Therefore, Rahim's claims against the defendant, a state agency, are barred by the Eleventh Amendment.

2. Failure to State a Claim

Moreover, even if Rahim attempted to bring this action against a defendant that is amenable to suit,[3] the court finds he has failed to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). A legal action under 42 U.S.C. § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). To prevail on either a procedural or substantive due process claim pursuant to § 1983, inmates must first demonstrate that they were deprived of "life, liberty, or property" by governmental action. Beverati v. Smith, 120 F.3d 500, 502 (4th Cir. 1997). In this action, Plaintiff

[2] Congress has not abrogated the states' sovereign immunity under § 1983, see Quern v. Jordan, 440 U. S. 332, 343 (1979), and South Carolina has not consented to suit in federal district court. S.C. Code Ann. § 15-78-20(e).

[3] For instance, Rahim filed service documents for Jerry B. Adger, Director of the South Carolina Department of Probation, Parole, and Pardon Services, but he did not name or discuss Adger in the Complaint.

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alleges his right to due process was violated because his parole was rescinded without probable cause and in violation of his contract with the defendant.

However, there is no liberty interest in a prisoner's expectation of parole, even if the expectation comes from an agreement between the parole board and the prisoner. See Greenholtz v. Inmates of Neb. Penal and Corr. Complex, 442 U.S. 1, 7 (1979) ("There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence."); see also Jago v. Van Curen, 454 U.S. 14, 17 (1981) (holding, in a habeas corpus action, that a state prisoner had no protected liberty interest in his expectation of parole, even where the prisoner was notified that he had been paroled but later had the parole rescinded). Therefore, Plaintiff fails to state a claim under § 1983 because the law is well settled that he had no liberty interest in his parole sufficient to implicate the Due Process Clause of the Fourteenth Amendment.[4]

3. State Law Claims

Rahim's federal claims are recommended for summary dismissal. Therefore, to the extent Rahim attempts to raise state law claims for breach of contract or intentional infliction of emotional distress, the district court should decline to exercise supplemental jurisdiction over those causes of action. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1996); Tigrett v. Rector and Visitors of the Univ. of Va., 290 F.3d 620, 626 (4th Cir. 2002) (affirming district court's dismissal of state law claims when no federal claims remained in the case).

[4] Further, to the extent Rahim seeks release from confinement, habeas corpus is the exclusive remedy for such relief. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

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III. Conclusion

For the foregoing reasons, it is recommended that the Complaint be dismissed without prejudice and without issuance and service of process.

August 29, 2016
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

FILED: February 27, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6825
(0:16-cv-02440-JMC)

DAWUD RAHIM

Plaintiff - Appellant

v.

THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk