UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6102

JONATHAN EUGENE BRUNSON,

Plaintiff - Appellant,

v.

STATE OF NORTH CAROLINA; NORTH CAROLINA DEPARTMENT OF JUSTICE; OFFICE OF THE DISTRICT ATTORNEY; OFFICE OF THE 12TH JUDICIARY,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, Chief District Judge. (5:17-ct-03083-D)

Submitted: May 17, 2018 Decided: May 21, 2018

Before KING and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jonathan Eugene Brunson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX - A

PER CURIAM:

Jonathan Eugene Brunson appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) complaint under 28 U.S.C. § 1915(e)(2)(B) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Brunson v. North Carolina*, No. 5:17-ct-03083-D (E.D.N.C. Oct. 11, 2017). 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 EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CT-3083-D

JONATHAN EUGENE BRUNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
STATE OF NORTH CAROLINA, et al.,	)	
	)	
Defendants.	)	

On March 27, 2017, Jonathan Eugene Brunson ("Brunson" or "plaintiff"), a state inmate proceeding pro se and in forma pauperis [D.E. 2, 8], filed a complaint under 42 U.S.C. § 1983 [D.E. 1]. On May 3, 2017, Brunson moved to amend his complaint to name additional defendants [D.E. 10]. As explained below, the court grants the motion to amend and dismisses Brunson's complaint as frivolous.

When a prisoner seeks relief in a civil action from a governmental entity or officer, a court must review and dismiss the complaint if it is "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a)-(b)(1). A frivolous complaint "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (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) (quotations omitted). Factually frivolous claims lack an "arguable basis" in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of a pleading is flexible, "and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings

APPENDIX - B

drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). Erickson, however, does not undermine the "requirement that a pleading contain 'more than labels and conclusions.'" Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)); see Ashcroft v. Iqbal, 556 U.S. 662, 677–83 (2009); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 566 U.S. 30 (2012); Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255–56 (4th Cir. 2009); Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009). The court grants Brunson's motion to amend and reviews all of Brunson's filings to determine whether he has stated a claim.

The court begins by reciting the relevant background concerning Brunson's claims.

> On June 17, 2011, in the Cumberland County Superior Court, [Brunson] was convicted, following a jury trial, of the following: (1) attempted statutory rape of a 13 year old; (2) eight counts of sexual activity by a substitute parent by cunnilingus and fellatio; (3) seven counts of taking indecent liberties with a child; (4) statutory sexual offense of a 14 year old by cunnilingus, fellatio, and penetration; (5) four counts of committing a crime against nature by cunnilingus and fellatio; (6) four counts of statutory sexual offense of a 15 year old by cunnilingus, fellatio, and penetration; and (7) attempted statutory rape of a 15 year old.
>
> [Brunson] subsequently filed a notice of appeal to the North Carolina Court of Appeals. On February 27, 2012, [Brunson] filed a motion for appropriate relief ("MAR") in the court of appeals. On July 17, 2012, the court of appeals affirmed [Brunson]'s convictions and sentence. In that same opinion, the court of appeals dismissed without prejudice [Brunson]'s MAR to allow [Brunson] to file the motion with the trial court.
>
> * * *
>
> On October 17, 2013, [Brunson] filed a pro se MAR in the Cumberland County Superior Court, which was denied on November 25, 2013. On December 10, 2013, [Brunson] filed a petition for a writ of certiorari with the North Carolina Court of Appeals, which was denied on December 23, 2013.
>
> On January 9, 2014, [Brunson] filed [a] pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. [Brunson] raised the following claims in his § 2254 petition: (1) the state failed to receive an evidence report of abuse as required pursuant to N.C. Gen. Stat. § 7B–307(a); (2) the trial court lacked personal and

> subject matter jurisdiction due to the state's failure to take testimony and oath from detective Hamilton and Guedalia; (3) the arrest warrant was not supported by probable cause; (4) the indictments were not supported by probable cause; (5) the state used evidence obtained pursuant to an unlawful arrest; (6) the state denied [Brunson] his right to present evidence in his own defense; (7) the state failed to disclose exculpatory evidence; and (8) the grand jury proceedings were unconstitutional.
>
> Respondent subsequently filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) arguing that [Brunson]'s habeas petition should be dismissed because it was filed outside of the statute of limitations, and therefore is time-barred.

Brunson v. Solomon, No. 5:14-HC-2009-FL, 2015 WL 331496, at *1–2 (E.D.N.C. Jan. 26, 2015) (unpublished) (citations omitted), appeal dismissed, 606 F. App'x 86 (4th Cir. 2015) (per curiam) (unpublished), cert. denied sub nom. Brunson v. Taylor, 136 S. Ct. 421 (2015); cf. Compl. [D.E.1] 2.

Brunson alleges (without any further elaboration) that the prosecution withheld evidence from him in violation of Pennsylvania v. Ritchie, 480 U.S. 39 (1987), and Brady v. Maryland, 373 U.S. 83 (1963). See Compl. at 4. Brunson alleges that after his conviction, he has been "depriv[ed] of procedural due process" because he "motioned and petitioned the state courts numerous times with Ritchie and Brady claims," but defendants "repeatedly acted to prosecute against plaintiff's motions and petitions . . . and, in turn, . . . acted to deny plaintiff's motions and petitions . . . , thereby depriving plaintiff of procedural due process of a . . . hearing to formally address his Ritchie and Brady claims." Id. at 4–5; see [D.E. 10] 2–3. Brunson names as defendants the State of North Carolina, the North Carolina Department of Justice, North Carolina Attorney General Josh Stein, the district attorney's office that prosecuted Brunson, District Attorney William West, and the judicial district that presided over Brunson's criminal case and post-conviction motions, including the senior resident superior court judge for that district. See Compl. at 3; [D.E. 10] 1–2. Brunson seeks a

declaratory judgment that his constitutional rights have been violated and injunctive relief requiring defendants to "provide plaintiff with procedural due process of a . . . disclosure hearing as a post-deprivation remedy that the state is constitutionally required to provide." Compl. at 5–6.

"To state a claim under [section] 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988); see Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Additionally, a section 1983 plaintiff must plausibly allege the personal involvement of a defendant. See, e.g., Iqbal, 556 U.S. at 676; Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691–92 (1978); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

Generally, a plaintiff cannot recover monetary damages or obtain equitable relief under section 1983 for alleged constitutional violations when success on his claims would imply the invalidity of an underlying conviction unless he can "prove that the conviction . . . has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 486–87 (1994); see Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005); Omar v. Chasanow, 318 F. App'x 188, 189 & n.* (4th Cir. 2009) (per curiam) (unpublished) (collecting cases); Michau v. Charleston Cty., 434 F.3d 725, 728 (4th Cir. 2006). In Wilkinson, the Supreme Court "comprehensively surveyed [its] decisions on the respective provinces of § 1983 civil rights actions and § 2254 federal habeas petitions." Skinner v. Switzer, 562 U.S. 521, 525 (2011). The Court noted that it "has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement—either directly through an injunction compelling speedier release or indirectly through

a judicial determination that necessarily implies the unlawfulness of the State's custody." Wilkinson, 544 U.S. at 81 (emphasis omitted). The Court concluded "that a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration." Id. at 81–82 (emphasis omitted).

"A district court must undertake a case specific analysis to determine whether success on the claims would necessarily imply the invalidity of a conviction or sentence." Thigpen v. McDonnell, 273 F. App'x 271, 272 (4th Cir. 2008) (per curiam) (unpublished). Brunson's claims necessarily imply the invalidity of his convictions. See, e.g., Skinner, 562 U.S. at 536; Kenny v. Bartman, No. 16-2152, 2017 WL 3613601, at *6 (6th Cir. May 19, 2017) (per curiam) (unpublished); Brookins v. Bristol Twp. Police Dep't, 642 F. App'x 80, 80–81 (3d Cir. 2016) (per curiam) (unpublished); Johnson v. Hansher, 607 F. App'x 581, 582 (7th Cir. 2015) (per curiam) (unpublished); Griffin v. Balt. Police Dep't, 804 F.3d 692, 694–95 (4th Cir. 2015); Frantz v. Kingston Police Dep't, No. 3:15-CV-0402, 2015 WL 1951582, at *2–3 (M.D. Pa. Apr. 28, 2015) (unpublished) (collecting cases); Wentzel v. Bakker, No. 1:12-CV-1397, 2013 WL 4068183, at *10 (W.D. Mich. Aug. 12, 2013) (unpublished).

To the extent Brunson directly challenges the outcome of his state-court post-conviction efforts, the court lacks jurisdiction over Brunson's claims. Generally, federal district courts have "no authority to review final judgments of a state court in judicial proceedings." D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); see Rooker v. Fid. Tr. Co., 263 U.S. 413, 415–16 (1923). The Rooker-Feldman doctrine prohibits a "party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on

the losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005–06 (1994); see Feldman, 460 U.S. at 476; Thana v. Bd. of License Comm'rs for Charles Cty., 827 F.3d 314, 318–20 (4th Cir. 2016); Washington v. Wilmore, 407 F.3d 274, 279 (4th Cir. 2005). The Rooker-Feldman doctrine encompasses "not only review of adjudications of the state's highest court, but also the decisions of its lower courts." Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 199 (4th Cir. 2000) (quotation omitted). Rooker-Feldman "reinforces the important principle that review of state court decisions must be made to the state appellate courts, and eventually to the Supreme Court, not by federal district courts or courts of appeal." Id. (quotation omitted). "The doctrine [also] preserves federalism by ensuring respect for the finality of state court judgments." Washington, 407 F.3d at 279.

Rooker-Feldman is a "narrow doctrine." Lance v. Dennis, 546 U.S. 459, 464 (2006); see Thana, 827 F.3d at 318–20. It applies only to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus., 544 U.S. 280, 284 (2005); see Skinner, 562 U.S. at 531–33; Thana, 827 F.3d at 318–20. The Rooker-Feldman doctrine applies when the party seeking relief in federal court asks the federal court to "reverse or modify the state court decree." Adkins v. Rumsfeld, 464 F.3d 456, 464 (4th Cir. 2006) (quotation omitted); see Thana, 827 F.3d at 318–20. Accordingly, the court "examine[s] whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If [the state-court loser] is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply." Davani v. Va. Dep't of Transp., 434 F.3d 712, 718 (4th Cir. 2006) (footnote and quotation omitted); see Thana, 827 F.3d at 318–20.

In Skinner, the Supreme Court held that the plaintiff's section 1983 complaint alleging

procedural-due-process claims relating to a Texas state law providing a procedure for seeking postconviction DNA testing did not violate Heck or Rooker-Feldman where the plaintiff "d[id] not challenge the adverse [state court] decisions themselves" but rather "target[ed] as unconstitutional the Texas statute they authoritatively construed" and "[s]uccess in his suit for DNA testing would not 'necessarily imply' the invalidity of his conviction." Skinner, 562 U.S. at 532–34. Brunson's complaint does not fall within Skinner's holding. Brunson does not identify a particular North Carolina post-conviction statute he contends "is itself invalid or [allege] that the state court construed the statute in such a way as to deny him procedural due process." Casey v. Hurley, 671 F. App'x 137, 138 (4th Cir. 2016) (per curiam) (unpublished); see Cooper v. Ramos, 704 F.3d 772, 781 (9th Cir. 2012); Alvarez v. Attorney Gen. for Fla., 679 F.3d 1257, 1263 (11th Cir. 2012); Molineaux v. Vickers, No. 2:14-CV-12270, 2016 WL 7851413, at *6 (S.D. W. Va. Dec. 22, 2016) (unpublished), R&R adopted, 2017 WL 235186 (S.D. W. Va. Jan. 18, 2017) (unpublished); Hairston v. Henderson, No. 1:14CV940, 2015 WL 7175773, at *2 (M.D.N.C. Nov. 13, 2015) (unpublished) (collecting cases); cf. LaMar v. Ebert, 681 F. App'x 279, 286–87 (4th Cir. 2017) (per curiam) (unpublished).

In sum, the court GRANTS plaintiff's motion to amend [D.E. 10] and DISMISSES the action under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim. The clerk shall close the case.

SO ORDERED. This 11 day of October 2017.

JAMES C. DEVER III
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CT-3083-D

JONATHAN EUGENE BRUNSON, Plaintiff,	)	
v.	)	**ORDER**
STATE OF NORTH CAROLINA, et al., Defendants.	)	

On March 27, 2017, Jonathan Eugene Brunson ("Brunson" or "plaintiff"), a state inmate proceeding pro se and in forma pauperis [D.E. 2, 8], filed a complaint under 42 U.S.C. § 1983 [D.E. 1]. On October 11, 2017, the court reviewed the complaint pursuant to 28 U.S.C. § 1915, granted Brunson's motion to amend, and dismissed the action as frivolous [D.E. 12]. On that same date, the clerk entered judgment [D.E. 13]. On October 20, 2017, Brunson moved for reconsideration [D.E. 14]. On November 6, 2017, Brunson filed a notice of appeal [D.E. 15].

Ordinarily, "a district court loses jurisdiction to amend or vacate its order after the notice of appeal has been filed." Lewis v. Tobacco Workers' Int'l Union, 577 F.2d 1135, 1139 (4th Cir. 1978); see Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (per curiam); Haefner v. Cty. of Lancaster, 116 F.3d 1473, at *1 (4th Cir. 1997) (per curiam) (unpublished table decision). However, a notice of appeal filed after judgment is entered but before the court rules on a motion for reconsideration "becomes effective . . . when the order disposing of the last such remaining motion is entered." Fed. R. App. P. 4(a)(4)(B)(i); see Wheeler v. Accrediting Council for Continuing Educ. & Training, 70 F.3d 114, at *1 (4th Cir. 1995) (per curiam) (unpublished table decision). Thus, the court considers Brunson's motion.

APPENDIX - C

Federal Rule of Civil Procedure 59(e) permits a court to alter or amend a judgment. See Fed. R. Civ. P. 59(e). Whether to alter or amend a judgment under Rule 59(e) is within the sound discretion of the district court. See, e.g., Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 653 (4th Cir. 2002); Hughes v. Bedsole, 48 F.3d 1376, 1382 (4th Cir. 1995). The Fourth Circuit has recognized three reasons for granting a motion to alter or amend a judgment under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not [previously] available . . . ; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (quotation omitted); see Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005); Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998).

In dismissing Brunson's complaint, the court held that Brunson's complaint sought to collaterally attack his criminal convictions in violation of Heck v. Humphrey, 512 U.S. 477, 486–87 (1994), or was otherwise an attack on state-court judgments over which the court lacks jurisdiction. See Order [D.E. 12] 4–7. Brunson has not cited any recent change in controlling law, any newly discovered evidence, or any clear error in this court's order.

To the extent Brunson requests relief under Federal Rule of Civil Procedure 60(b), his motion also fails. "Federal Rule of Civil Procedure 60(b) authorizes a district court to grant relief from a final judgment for five enumerated reasons or for 'any other reason that justifies relief.'" Aikens v. Ingram, 652 F.3d 496, 500 (4th Cir. 2011) (en banc) (quoting Fed. R. Civ. P. 60(b)(6)). Under Rule 60(b), a movant first must demonstrate that his motion is timely, that he has a meritorious claim or defense, that the opposing party will not suffer unfair prejudice from setting aside the judgment, and that exceptional circumstances warrant the relief. See Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.12 (4th Cir. 2010); Nat'l Credit Union Admin. Bd. v. Gray, 1 F.3d 262, 264 (4th Cir.

1993). If a movant satisfies these threshold conditions, he must then "satisfy one of the six enumerated grounds for relief under Rule 60(b)." Gray, 1 F.3d at 266. Brunson has failed to establish a meritorious claim or defense. Thus, Brunson fails to meet Rule 60(b)'s threshold requirements.

In sum, the court DENIES Brunson's motion [D.E. 14].

SO ORDERED. This 25 day of January 2018.

JAMES C. DEVER III
Chief United States District Judge

FILED: June 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6102
(5:17-ct-03083-D)

JONATHAN EUGENE BRUNSON

Plaintiff - Appellant

v.

STATE OF NORTH CAROLINA; NORTH CAROLINA DEPARTMENT OF JUSTICE; OFFICE OF THE DISTRICT ATTORNEY; OFFICE OF THE 12TH JUDICIARY

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX - D