UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6827

AZANIAH BLANKUMSEE,

Plaintiff - Appellant,

v.

WASHINGTON COUNTY CIRCUIT COURT; JUDGE DONALD EUGENE BEACHLEY; JUDGE DANA WRIGHT; MARK BOYER, Judge; WASHINGTON COUNTY STATES ATTORNEY; JOSEPH MICHAEL; LARRY HOGAN, Maryland Governor, individually and in official capacity,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Paul W. Grimm, District Judge. (8:18-cv-01509-PWG)

Submitted: November 29, 2018 Decided: December 13, 2018

Before DIAZ and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Azaniah Blankumsee, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Azaniah Blankumsee appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) action. His sole claim on appeal is that the district court failed to address his claims for injunctive relief. Upon review, we conclude that these claims are barred by *Heck v. Humphrey,* 512 U.S. 477, 486-87 (1994). *See Wilkinson v. Dotson,* 544 U.S. 74, 82 (2005) (holding 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"). Because Blankumsee may refile his claims for injunctive relief should his conviction ever be overturned or called into question by the appropriate court, we modify the district court's order to reflect that the claims for injunctive relief are dismissed without prejudice. 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 AS MODIFIED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

AZANIAH BLANKUMSEE,	*	
	*	
Plaintiff,	*	
	*	
v	*	Civil Action No. PWG-18-1509
	*	
WASHINGTON COUNTY CIRCUIT COURT,	*	
JUDGE DONALD E. BEACHLEY,	*	
JUDGE DANA WRIGHT,	*	
JUDGE MARK BOYER,	*	
WASHINGTON COUNTY STATE'S ATTORNEY,[1]	*	
JOSEPH MICHAELS,[2]	*	
GOVERNOR LARRY HOGAN,	*	
	***	

ORDER

Self-represented plaintiff Azaniah Blankumsee is incarcerated at Eastern Correctional Institution. In this Complaint, Blankumsee claims that Defendants violated his rights under the Eighth and Fourteenth Amendments to the Constitution and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* by failing to properly assess his competence prior to trying and sentencing him for the 2004 crime for which he currently is incarcerated. ECF No. 1. He seeks monetary damages against Defendants for their purported failure to provide him with drug, alcohol, and mental health treatment and to order a competency hearing based on Blankumsee's disability. He asserts that on June 15, 2017, his mental competence was assessed and it was determined that he is legally insane.[3] *Id.* ¶¶ 14–15. Blankumsee also alleges his sentence of

[1] Charles P. Strong, Jr. is Washington County State's Attorney. *See* http://www2.washco-md.net/sao/index.shtm (viewed June 5, 2018).

[2] Joseph Michael is Deputy State's Attorney in Washington County, Maryland. The Clerk will amend the docket to reflect the proper spelling of Joseph Michael's name.

[3] Fed. R. Civ. P. 17(c)(2) provides that "[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an

incarceration reflects unlawful discriminatory animus, based solely on the fact that, according to Blankumsee, Black men in Washington County are not found incompetent to stand trial; he fails to provide any facts specific to his case to substantiate his claim of racial discrimination.

Blankumsee has not paid the civil filing fee or filed a Motion for Leave to Proceed in Forma Pauperis. Requiring him to correct this deficiency, however, will serve only to delay resolution of this matter.

Under 42 U.S.C. § 1983, a plaintiff may file suit against any person who, acting under color of state law, "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" of the United States. However, § 1983 "is not itself a source of substantive rights, but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see Wahi v. Charleston Area Med. Ctr.*, 562 F.3d 599, 615 (4th Cir. 2009).

Defendant Washington County Circuit Court is not a "person" amenable to suit under 42 U.S.C. § 1983. *See* 42 U.S.C. § 1983; *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690 & n.55 (1978) (noting that for purposes of § 1983 a "person" includes individuals and "bodies politic and corporate"); *see generally* 5 Charles Alan Wright, *et al.*, *Fed. Prac. & Proc.* § 1230 (2002). Therefore, the suit shall be dismissed as to the Washington County Circuit Court.

Judges Donald E. Beachley, Dana Wright, and Mark Boyer are Maryland State judges whom Blankumsee is suing for decisions made in their capacity as judges. This cause of action

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action." Blankumsee has stated his claims clearly and, because he fails to identify any Defendants who are amenable to suit, such appointment is unnecessary.

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cannot be maintained because it is prohibited by the doctrine of judicial immunity. *See Forrester v. White*, 484 U.S. 219, 226-27 (1988) ("If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits."); *Hamilton v. Murray*, 648 Fed. App'x 344 (4th Cir. 2016) (unpublished) ("Judges possess absolute immunity for their judicial acts and are subject to liability only in the 'clear absence of all jurisdiction.'" (quoting *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)). Indeed, the doctrine of judicial immunity shields judges from monetary claims against them in both their official and individual capacities. *Mireles v. Waco*, 502 U.S. 9, 9–10 (1991) (per curiam). Judicial immunity is an absolute immunity; it does not merely protect a defendant from assessment of damages, but also protects a judge from damages suits entirely. *Id.* at 11. An act is still judicial, and immunity applies, even if the judge commits "'grave procedural errors.'" *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)). Moreover, "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Stump*, 435 U.S. at 355–56; *see Dean v. Shirer*, 547 F.2d 227, 231 (4th Cir. 1976) (stating that a judge may not be attacked for exercising judicial authority even if done improperly).

Blankumsee is suing the Washington County State's Attorney and Joseph Michael Assistant, Deputy State's Attorney, for their role in his criminal conviction and incarceration. "Maryland States Attorneys are quasi-judicial officers who enjoy absolute immunity when performing prosecutorial functions, as opposed to investigative or administrative functions." *Young v. Spruill*, No. ELH-13-1191, 2013 WL 3353637, at *1 (D. Md. July 1, 2013) (citing *Imbler v. Pachtman*, 424 U.S. 409, 422-23 (1976)); *see also Nero v. Mosby*, 890 F.3d 106, 117–

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18 (4th Cir. 2018). Because "[a]bsolute immunity is designed to protect judicial process . . . , the inquiry is whether a prosecutor's actions are closely associated with judicial process." *Young v. Spruill*, No. ELH-13-1191, 2013 WL 3353637, at *1 (citing *Burns v. Reed*, 500 U.S. 478, 479 (1991)). Courts use a "functional approach" to "determine whether a particular act is 'intimately associated with the judicial phase.'" *Nero*, 890 F.3d at 118 (quoting *Imbler*, 424 U.S. at 430). Such prosecutorial acts also are referred to as "advocative functions." *Id.* The United States Court of Appeals for the Fourth Circuit recently stated in *Nero*, 890 F.3d at 118:

> A prosecutor acts as an advocate when she professionally evaluates evidence assembled by the police, *Buckley*, 509 U.S. at 273, decides to seek an arrest warrant, *Kalina*, 522 U.S. at 130, prepares and files charging documents, *id.*, participates in a probable cause hearing, *Burns*, 500 U.S. at 493, and presents evidence at trial, *Imbler*, 424 U.S. at 431.

The decisions pertaining to prosecute allude to Defendants' roles as advocates. Given the nature of the allegations in the Complaint, Defendants enjoy absolute immunity. *See Lyles v. Sparks*, 79 F.3d 372, 376-77 (4th Cir. 1996).

Blankumsee fails to allege how Governor Hogan personally participated in violating his constitutional rights. Section 1983 requires a showing of personal fault, whether based upon the defendant's own conduct or another's conduct in executing the defendant's policies or customs. *See Monell*, 436 U.S. at 690; *West v. Atkins*, 815 F.2d 993, 996 (4th Cir. 1987), *rev'd on other grounds*, 487 U.S. 42 (1988) (no allegation of personal involvement relevant to the claimed deprivation); *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977) (in order for an individual defendant to be held liable pursuant to § 1983, it must be "affirmatively shown that the official charged acted personally in the deprivation of the plaintiff's rights") (quoting *Bennett v. Gravelle*, 323 F. Supp. 203, 214 (D. Md. 1971), *aff'd*, 451 F.2d 1011 (4th Cir. 1971)). Moreover, an individual cannot be held liable under § 1983 under a theory of respondeat superior, which is

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a legal doctrine under which, in some circumstances, an employer is responsible for the actions of employees performed within the course of their employment. *See Monell*, 436 U.S. at 690; *Love–Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004) (no respondeat superior liability under § 1983). Thus, to establish § 1983 liability, a plaintiff must show that a defendant was personally involved in the alleged deprivation of his constitutional rights, *Vinnedge*, 550 F.2d at 928–29, or establish the defendant's liability as a supervisor, *see Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). Supervisory liability may attach under 42 U.S.C. § 1983 if (1) the defendant had actual or constructive knowledge that a subordinate was engaged in conduct that posed a pervasive risk of a constitutional injury; (2) the defendant's response to that knowledge was so inadequate as to show deliberate inference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between defendant's inaction and the alleged constitutional injury. *Shaw*, 13 F.3d at 799. Blankumsee fails to allege any involvement or knowledge on Governor Hogan's part in the acts of which he complains.

Further, Governor Hogan is entitled to absolute legislative immunity for any constitutionally authorized activities such as whether to sign or veto a particular bill and whether to recommend proposed legislation to the General Assembly. *McCray v. Dep't of Transp.*, 741 F.3d 480, 484 (4th Cir. 2014) ("Legislative immunity protects those engaged in legislative functions against the pressures of litigation and the liability that may result."); *E.E.O.C. v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011). "The determination of legislative immunity is based on the function being fulfilled—not the title of the actor claiming immunity." *McCray*, 741 F.3d at 485. Blankumsee's claim as to Hogan also shall be dismissed.

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Accordingly, it is this _____ day of June 2018, by the United States District Court for the District of Maryland, hereby ordered:

1. The Clerk SHALL AMEND the docket to reflect that the name of Defendant "Joseph Michaels" is Joseph Michael.
2. The case IS DISMISSED with prejudice;
3. The Clerk SHALL CLOSE this case; and
4. The Clerk SHALL SEND a copy of this Order to Blankumsee.

6/25/18

Paul W. Grimm
United States District Judge

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