

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-2993

Thomas Phillip Bell

Appellant

v.

Kiah Demarias Leigh and John L. Brown, Judge

Appellees

Appeal from U.S. District Court for the District of South Dakota - Pierre
(3:17-cv-03022-RAL)

ORDER

The petition for rehearing by the panel is denied.

March 19, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2993

Thomas Phillip Bell

Plaintiff - Appellant

v.

Kiah Demarias Leigh; John L. Brown, Judge

Defendants - Appellees

Appeal from U.S. District Court for the District of South Dakota - Pierre
(3:17-cv-03022-RAL)

JUDGMENT

Before COLLTON, BOWMAN and SHEPHERD, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for appointment of counsel is denied as moot.

February 06, 2018

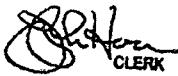
Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

AUG 31 2017


Clerk

THOMAS PHILLIP BELL,

Plaintiff,

vs.

KIAH DEMARIAS LEIGH, and
JOHN L. BROWN, JUDGE,

Defendants.

3:17-CV-03022-RAL

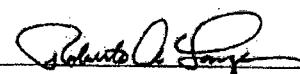
JUDGMENT OF DISMISSAL

For the reasons contained in the Order Screening Case and Dismissing Without Prejudice, it is hereby

ORDERED, ADJUDGED AND DECREED that Bell's Complaint is dismissed without prejudice to refiling a § 2254 case against proper defendants and is dismissed with prejudice as to the defendants named in this case and that Judgment of Dismissal hereby enters under Rules 54 and 58 of the Federal Rules of Civil Procedure.

DATED this 31st day of August, 2017.

BY THE COURT:


ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

AUG 31 2017


CLERK

THOMAS PHILLIP BELL,

Plaintiff,

vs.

KIAH DEMARIAS LEIGH, and
JOHN L. BROWN, JUDGE,

Defendants.

3:17-CV-03022-RAL

ORDER SCREENING CASE AND DISMISSING
WITHOUT PREJUDICE

On June 5, 2017, Plaintiff Thomas Phillip Bell filed a Complaint in the United States District Court for the District of Columbia appearing to challenge his state court conviction in Hughes County, South Dakota, before the Honorable John L. Brown. Doc. 1. The District of Columbia transferred the case to this Court. Docs. 3, 5.

On August 11, 2017, Bell filed a Supplement and paid a \$5.00 filed fee, which along with other material suggest that Bell wishes to pursue a 28 U.S.C. § 2254 challenge to his state court conviction. Docs. 7, 8. Bell's filings make clear that Defendant Kiah Demarias Leigh is the victim of the sex offense to which Bell believes he was forced to plead guilty to and that John L. Brown is the state court judge who handled Bell's guilty plea and sentencing.

Under the Rules Governing Section 2254 Cases in the United States District Courts (§ 2254 Rules), the court must promptly examine and screen the complaint or petition. § 2254 Rule 4. "If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner." § 2254 Rule 4. Under § 2254 Rule 2(a), if the petitioner is in custody, the correct defendant to be named as respondent or defendant is "the state officer who has custody." Bell listed an apartment in Indiana as his

address, so he does not appear to be in custody of any state official. Under § 2254 Rule 2(b), if the petitioner is “not yet in custody—but may be subject to further custody—under the state court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where judgment was entered.” § 2254 Rule 4(b). Of course, Bell must exhaust all remedies available to him in state court before having a viable § 2254 claim. 28 U.S.C. § 2254(b). Neither the victim of the sex offense of which Bell believes he was somehow improperly convicted nor Judge Brown have “current custody” of Bell or are the attorney general of the state of South Dakota. Moreover, Judge Brown has judicial immunity from suit for actions, such as taking a guilty plea from Bell and sentencing Bell, as those are acts within his judicial duties. Thus, Bell’s § 2254 claim does not survive initial screening under § 2254 Rules 2 and 4. For good cause, it is hereby

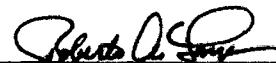
ORDERED that Bell’s in forma pauperis motion, Doc. 2, is moot as Bell paid the \$5.00 filing fee and has no other financial obligation for his § 2254 case. It is further

ORDERED that Bell’s complaint is dismissed without prejudice to refiling a § 2254 motion if he chooses against the proper defendant or defendants if he has exhausted state court remedies. It is finally

ORDERED that the Clerk of Court send a copy of this Order, the Judgment of Dismissal, and a § 2254 petition form and packet to Bell at his address listed in this case.

DATED this 31st day of August, 2017.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE