UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7064

JAMES B. CURRY,

Plaintiff - Appellant,

v.

UNITED STATES SUPREME COURT; SCOTT S. HARRIS, Clerk of Court for Supreme Court of the United States,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Aiken. Joseph F. Anderson, Jr., Senior District Judge. (1:16-cv-02733-JFA)

Submitted: December 21, 2017 Decided: December 28, 2017

Before WILKINSON and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

James B. Curry, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James B. Curry seeks to appeal the district court's order directing the district court clerk to again mail a copy of the magistrate judge's report and recommendation to Curry and permitting Curry to file objections within 14 days of service. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Curry seeks to appeal is neither a final order nor an appealable interlocutory or collateral order.* Accordingly, we dismiss the appeal for lack of jurisdiction and deny Curry's pending motions to subpoena a legal log report, for default or summary judgment, to expedite service and decision, for an investigation into misconduct, and to compel. 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.

DISMISSED

*Although the district court adopted the magistrate judge's recommendation and dismissed Curry's complaint without prejudice before we considered this appeal, the doctrine of cumulative finality does not cure the jurisdictional defect. *Equip. Fin. Grp. v. Traverse Comput. Brokers*, 973 F.2d 345, 347-48 (4th Cir. 1992) (holding that doctrine of cumulative finality only applies where order appealed from could have been certified under Fed. R. Civ. P. 54(b)); *see In re Bryson*, 406 F.3d 284, 288 (4th Cir. 2005) (noting that "a premature notice of appeal from a clearly interlocutory decision" cannot be saved under doctrine of cumulative finality (internal quotation marks omitted)).

FILED: March 20, 2018

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No. 17-7064
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JAMES B. CURRY

Plaintiff - Appellant

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UNITED STATES SUPREME COURT; SCOTT S. HARRIS, Clerk of Court for Supreme Court of the United States

Defendants - Appellees

O R D E R

The petition for rehearing en banc and supplemental petitions for rehearing en banc were 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 and the supplemental petitions for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

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

James B. Curry, #186737,

Plaintiff,

vs.

United States Supreme Court; Scott S. Harris, Clerk of Court for the Supreme Court of the United States,

Defendants.

C/A No. 1:16-2733-JFA

ORDER

This matter is before the Court on a United States Magistrate Judge's Report and Recommendation ("Report"), recommending that this Court should dismiss the complaint in this case without prejudice and without issuance and service of process. ECF No. 8.

On August 2, 2016, Plaintiff James B. Curry, proceeding pro se, filed this action against the United States Supreme Court and Scott S. Harris, Clerk of Court for the United States Supreme Court (collectively "Defendants") alleging a violation of his constitutional rights.[1] ECF No. 1. In addition, Plaintiff moved for leave to proceed *in forma pauperis* under 28 U.S.C. § 1915, ECF No. 2, which was granted on August 12, 2016, by Magistrate Judge Shiva V. Hodges, ECF No. 7.

[1] Plaintiff does not specify the manner in which he brings this claim, and the Magistrate Judge couches same as brought pursuant to 42 U.S.C. § 1983. However, Defendants are either federal entities or employees and, as such, it appears to be more appropriate that this action is brought pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Nonetheless, as the United States Supreme Court stated in *Harlow v. Fitzgerald*, "it would be 'untenable to draw a distinction for purposes of immunity law between suits brought against state officials under § 1983 and suits brought directly under the Constitution against federal officials.'" 457 U.S. 800, 818 n.30 (1982) (quoting *Butz v. Economou*, 438 U.S. 478, 504 (1978)). Therefore, despite this modification, the Report's analysis remains correct based upon Defendants' absolute immunity.

The Magistrate Judge assigned to this action[2] prepared a thorough Report and opines that this Court should dismiss the complaint in this case without prejudice and without issuance and service of process because Defendants are protected by judicial or quasi-judicial immunity. ECF No. 8. The Report sets forth in detail the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation. The parties were advised of their right to object to the Report, which was entered on the docket on August 12, 2016. ECF Nos. 8, 9. The Magistrate Judge gave Plaintiff until August 29, 2016, to file objections. *Id.* However, no objections were filed to the Report. Thus, this matter is ripe for the Court's review.

The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). In the absence of specific objections to the Report of the Magistrate Judge, this Court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After carefully reviewing the applicable laws, the record in this case, as well as the Report, this Court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law.[3] Accordingly, the Court adopts

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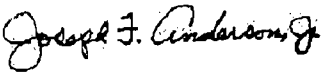
[2] The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(f) (D.S.C.). The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976).

[3] The Courts adds to the Report's analysis that the United States Supreme Court was acting within its jurisdiction in denying Plaintiff's petition for a writ of certiorari and his request for a rehearing. *See* 28 U.S.C. § 1257; U.S. Sup. Ct. R. 10 ("Review on a writ of certiorari is not a matter of right, but of judicial discretion."). Therefore, it is protected by absolute judicial immunity. Furthermore, Scott Harris, Clerk of Court for the United States Supreme Court, was fulfilling an integral role in the judicial process as a designee in sending letters to Plaintiff notifying him of the denials of his petition and request for rehearing. *See Jarvis v. Chasanow*, 448 F. App'x. 406 (4th Cir. 2011) (affirming dismissal and citing cases supporting that quasi-judicial immunity is accorded to individuals who play an integral part in the judicial process and clerk's office employees acting as a judge's designee).

and incorporates the Report and Recommendation, as modified, ECF No. 8. Therefore, this complaint is hereby summarily dismissed without prejudice and without issuance and service of process because Defendants are protected by judicial or quasi-judicial immunity.

IT IS SO ORDERED.



November 9, 2016
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

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

James B. Curry, #186737, Plaintiff, vs. United States Supreme Court; Scott S. Harris, Clerk of Court for the Supreme Court of the United States, Defendants.	C/A No.: 1:16-2733-JFA-SVH REPORT AND RECOMMENDATION

James B. Curry ("Plaintiff"), proceeding pro se and in forma pauperis, is an inmate incarcerated at Lee Correctional Institution. He filed this action pursuant to 42 U.S.C. § 1983 against the United States Supreme Court ("Supreme Court") and Scott. S. Harris, Clerk of Court for the United States Supreme Court ("Harris") (collectively "Defendants"), alleging a violation of his constitutional rights. Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(f) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that the district judge dismiss the complaint in this case without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff alleges he filed a petition for a writ of certiorari in the Supreme Court in reference to his "state habeas corpus being in violation of Rule #240 S.C.A.C. Rules." [ECF NO. 1 at 2]. Plaintiff claims he served the petition and a waiver form on the South

Carolina Attorney General, whose counsel, Benjamin Aplin ("Aplin"), signed and returned the waiver form to Plaintiff "stating he did not intend to file a response to the petition." *Id.* Plaintiff states he sent the signed waiver form to the Supreme Court, and on April 4, 2016, Harris sent Plaintiff a letter denying his petition for writ of certiorari. *Id.* Plaintiff alleges he filed a petition for rehearing and requested an order signed by the Supreme Court justices. *Id.* Plaintiff claims he received another letter from Harris on May 16, 2016, stating his petition for rehearing was denied. *Id.* Plaintiff argues that because "Rule 12.6 states that parties who file no documents will not qualify for any relief from the Court" and Aplin signed a waiver, the Supreme Court should have granted his petition for writ of certiorari. *Id.* at 5. Plaintiff seeks injunctive relief. *Id.*

II. Discussion

A. Standard of Review

Plaintiff filed this complaint 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 a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Allison v. Kyle*, 66 F.3d 71, 73 (5th Cir. 1995).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Merriweather v. Reynolds*, 586 F. Supp. 2d 548, 554 (D.S.C. 2008). 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. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

Plaintiff alleges Defendants violated his civil rights when his petition for writ of certiorari was denied, despite Aplin having failed to file a response to the petition. [ECF No. 1 at 2–3]. It is well-settled that judges and court support personnel have immunity from a claim for damages and injunctive relief arising out of their judicial actions. *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985). *See also Kincaid v. Vail*, 969 F.2d 594, 601 (7th Cir. 1992) (internal quotation marks and citation omitted) (finding the doctrine of absolute quasi-judicial immunity has been adopted and made applicable to court support personnel because of "the danger that disappointed litigants, blocked by the doctrine of absolute immunity from suing the judge directly, will vent their wrath on clerks, court

reporters, and other judicial adjuncts[.]"); *Abebe v. Seymour*, C/A No. 3:12-377-JFA-KDW, 2012 WL 1130667, *2–3 (D.S.C. Apr. 4, 2012) (finding Section 309(c) of the Federal Courts Improvement Act of 1996, Pub. L. No 104-317, 110 Stat. 3847 (1996) amended § 1983 to bar injunctive relief against a judicial officer "for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable."). Because Defendants are protected by judicial immunity from Plaintiff's claims, this case is subject to summary dismissal.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends that the court dismiss the complaint without prejudice and without issuance and service of process.

IT IS SO RECOMMENDED.

Shiva V. Hodges

August 12, 2016
Columbia, South Carolina

Shiva V. Hodges
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).