No. 18-8283

In The

Supreme Court of the United States

TERRY A. BURLISON,
Petitioner

v.

PAM ANGUS, INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY AS A
MARION COUNTY DEPUTY CLERK,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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April 4, 2019

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1. QUESTIONS PRESENTED

1. Whether the lower District Court correctly determined that Terry Burlison's sole claim against Pam Angus under 42 U.S.C. § 1983 for an alleged violation of Burlison's Fourth Amendment rights under the United States Constitution is patently frivolous and, as such, could be dismissed *sua sponte* without notice or an opportunity to respond.

2. Whether the lower courts correctly determined that Burlison's sole claim against Angus under § 1983 for an alleged violation of Burlison's Fourth Amendment rights is patently frivolous as barred by absolute immunity and qualified immunity.

3. Whether the lower District Court correctly determined that pursuant to the *Rooker-Feldman* doctrine, it lacked subject matter jurisdiction over Burlison's sole claim against Angus under § 1983 for an alleged violation of Burlison's Fourth Amendment rights.

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5. STATEMENT OF THE CASE

A. Nature of the Case

Petitioner Terry Burlison asserted a 42 U.S.C. § 1983 claim against Respondent Pam Angus, both in her individual capacity and in her official capacity as a Deputy Clerk of Court for Marion County, Florida, arising from Angus's issuance of a Writ of Possession on September 28, 2012 in the County Court in and for Marion County, Florida, Case No. 12-1901-SC, commanding the Sheriffs of Marion County, Florida to remove all persons from certain property in Marion County, Florida, and to place said property in the possession of the plaintiffs in that case, Jeffery W. Benefield and Cassandra K. Benefield. Burlison claims said Writ resulted in his being evicted from this property, allegedly in violation of his rights under the Fourth Amendment to the United States Constitution. (R. 1, p. 1–2, 4).

B. Course of proceedings and dispositions below

On October 12, 2017, Burlison filed a Complaint in the United States District Court for the Middle District of Florida, naming Angus as the sole Defendant both in her individual and official capacities. (R. 1).

On January 5, 2018, the District Court issued an Order of Dismissal *sua sponte*, finding that the action was due to be dismissed with prejudice as, based on the face of the Complaint, Angus was entitled to either absolute or qualified immunity as her actions were taken solely in her role as Deputy Clerk of the Marion County Circuit Court, and that the District Court lacked subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. (R. 11).

On February 2, 2018, Burlison filed a Notice of Appeal with the United States Court of Appeals for the Eleventh Circuit. (R. 13). On September 11, 2018, the Eleventh Circuit issued its opinion affirming the Middle District's dismissal. (R. 15). On February 12, 2019, Burlison filed his instant Petition for Writ of Certiorari (hereinafter "Burlison Petition") with this Court.

6. STATEMENT OF FACTS

On September 28, 2012, Angus, acting in her capacity as a Deputy Clerk for the Clerk of Court in and for Marion County, Florida, signed a Writ of Possession ("Writ") in in the County Court in and for Marion County, Florida, Case No. 12-1901-SC, commanding the Sheriffs of Marion County, Florida to remove all persons from the following property in Marion County, Florida: Green Oaks Manor Mobile Home Park, 6407 SE 108th Street, Lot #36, Belleview, FL 34420. It also commanded the Sheriffs to put the plaintiffs in that case, Jeffery W. Benefield and Cassandra K. Benefield, in possession of said property. The Writ stated that it was to be acted upon "no earlier than September 29, 2012 per Florida Statute § 723.062(1)." (R. 1, p. 4). According to Burlison's Complaint, Marion County Sheriff's Deputy Dunlap, acting upon this Writ, evicted Burlison from the subject property. (Id., p. 2).

On October 12, 2017, Burlison filed an action in the United States District Court for the Middle District of Florida, under 42 U.S.C. § 1983, against Pam Angus, individually and as a deputy clerk of court for Marion County. (R. 1). Burlison alleged the subject Writ was issued before the entry of a judgment in favor of the landlord. He alleged the issuance of the Writ ultimately caused him to lose possession of his

mobile home, which allegedly constituted a seizure of property in violation of the Fourth Amendment to the United States Constitution. Burlison claimed damages of $3,400,000.00. (Id., p. 2).

On January 5, 2018, District Judge James Moody issued an Order of Dismissal *sua sponte*, finding that Burlison's action was barred by the *Rooker-Feldman* doctrine and, therefore, was due to be dismissed. (R. 11). Judge Moody began by noting that prior to a *sua sponte* dismissal of an action, courts typically must provide plaintiffs with notice of the intent to dismiss and an opportunity to respond. He noted, however, that an exception exists when amending the complaint would be futile or when the complaint is patently frivolous. Judge Moodfy found that this exception applies as the action is patently frivolous. (Id., p. 1–2).

Judge Moody first noted that "[i]t is apparent from the face of the Complaint that, in taking the challenged actions, Angus was acting in her role as a deputy clerk of the Circuit Court." Based on this, he found Angus would be entitled to either absolute or qualified immunity for her actions. (Id., p. 2). Second, in reviewing the Middle District's docket, Judge Moody also found that Burlison had unsuccessfully attempted to litigate these same claims in *Burlison v. Williams*, Middle District of Florida Case No. 5:12-cv-00560-WTH-PRL. (Id.).

There, the Middle District issued an order dated May 20, 2013 dismissing Burlison's action for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. (*Williams*, R. 26). In that order, the court noted that Burlison's claim arose out of a hearing in a state civil eviction matter, *Jeffrey W. Benefield and*

Cassandra K. Benefield v. Terry A. Burlison, Case No. 12-1901-SC, in which the Benefields were seeking to evict Burlison from their mobile home park and to recoup unpaid rent. Judge Ritterhoff Williams was the presiding judge in that matter. On September 19, 2012, Judge Williams held a hearing at which he entered a default judgment of possession in favor of the Benefields. (*Williams*, R. 23-2, p. 19–20). The Final Judgment for Possession clearly stated, "The Clerk of Court is ordered to issue forthwith a Writ of Possession to the Marion County Sheriff's Department in compliance with the foregoing, commanding that said Plaintiff be put in possession of the premises. However, pursuant to Fla. Stat. § 723.062(1), said Writ of Possession shall not issue earlier than September 29, 2012, which is 10 days from September 19, 2012, the date judgment was granted." (*Williams*, R. 23-4, p. 1–2).

Based on these facts, the Middle District in *Williams* found that any § 1983 claim raised in Burlison's action would be inextricably intertwined with the state court judgments. For Burlison to prevail, the Middle District would necessarily have to review, interfere with, and/or overrule Judge Williams' final orders of default judgment and possession. (R. 26, p. 5). Regarding Burlison's argument concerning the issuance of the writ of possession, the Middle District in *Williams* noted that "there is no constitutional requirement that every writ of possession or other civil process relating to the seizure of property be preceded by a final judgment." (Id., p. 5–6). It also noted that such argument is "just another way of attacking the final judgments," which the Middle District lacks the subject matter to do under the *Rooker-Feldman* doctrine. The Middle District thus found that Burlison was really

asking the trial court to review a final state court judgment, an action which the Middle District was prohibited from doing pursuant to the *Rooker-Feldman* doctrine. (Id., p. 6–7).

Based on his review of the court's order of dismissal in the related *Burlison v. Williams* matter, Judge Moody in the instant matter again found that Burlison's claims are merely a "thinly veiled attempt to overrule or interfere with the state court proceedings and judgment." (R. 11, p. 3). Accordingly, he found the Middle District "lacks subject-matter jurisdiction over these frivolous claims," and that allowing further amendment "would be an exercise in futility because there appears to be no set of facts [Burlison] could allege that would support jurisdiction." Accordingly, Judge Moody dismissed the action with prejudice "for lack of jurisdiction." (Id.).

On February 2, 2018, Burlison filed an appeal with the Eleventh Circuit. (R. 13). On September 11, 2018, the Eleventh Circuit issued its opinion affirming the Middle District's dismissal. (R. 15). It noted that a district court may dismiss a complaint for failure to state a claim based upon an affirmative defense when the defense is an obvious bar given the allegations. (Id., p. 2–3). It found the Middle District did not abuse its discretion in finding Burlison's action patently frivolous as barred by judicial immunity. According to the Eleventh Circuit, Angus, as a deputy clerk of court, was entitled to absolute judicial immunity on Burlison's claim for money damages because, in issuing the subject Writ in favor of Burlison's landlords, she was following a direct order of a Marion County, Florida judge. (Id., p. 3–4).

7. SUMMARY OF THE ARGUMENT

In Burlison's petition, he appears to generally argue that both the Eleventh Circuit and the Middle District of Florida erred in finding that Angus is entitled to either absolute or qualified immunity as to Burlison's sole § 1983 claim. He argues the Eleventh Circuit's opinion is at odds with certain established principles of law, fails to read § 1983 in harmony with the common law, and misapplies the Fifth Circuit's holding in *Tarter v. Hury*, 646 F.2d 1010 (5th Cir. 1981). In short, he appears to argue that Angus is not entitled to either absolute or qualified immunity for the issuance of the subject Writ. As a corollary, he argues that whether Angus is entitled to absolute or qualified immunity "depends on facts not discernible from the record and of which the district court did not, and probably could not, take judicial notice." (Burlison Petition, p. 9). Finally, without citing any supporting legal authorities, he also argues the Eleventh Circuit's opinion constitutes an "outlier among federal appellate opinions." (Id., p. 9–10).

The basis upon which Burlison seeks review is wholly without merit. Both the District Court and the Eleventh Circuit properly found that Angus is entitled to either absolute or qualified immunity on Burlison's sole § 1983 claim for monetary relief. The Eleventh Circuit and the Middle District of Florida properly relied upon and applied *Tarter*, as well as *Roland v. Phillips*, 19 F.3d 552 (11th Cir. 1994) and *Williams v. Wood*, 612 F.2d 982, 985 (5th Cir. 1980), in finding Angus entitled to absolute judicial immunity. Further, both the Eleventh Circuit and the Middle District of Florida properly took judicial notice of the filings and orders entered in the

previous Middle District of Florida case of *Burlison v. Williams*. *See United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987). The legal authorities cited by Burlison do not establish any conflict between the lower courts' holdings and any § 1983 jurisprudence involving absolute or qualified immunity. Finally, although not discussed in Burlison's petition, the Middle District correctly found that this action is barred by application of the *Rooker-Feldman* doctrine as this action would necessarily require the lower court to review, interfere with, and/or overrule the Florida state court Final Judgment for Possession entered in *Jeffrey W. Benefield and Cassandra K. Benefield v. Terry A. Burlison*, Case No. 12-1901-SC. Accordingly, the District Court properly dismissed this action, and the Eleventh Circuit properly affirmed.

8. ARGUMENT

A. Standard for *sua sponte* dismissal

Generally, a district court's dismissal of a complaint for failure to state a claim is reviewed *de novo*. *Brinson v. Welsh*, 709 F. App'x 582, 584 (11th Cir. 2017). However, a district court's *sua sponte* dismissal is reviewed for abuse of discretion. *Id.* (citing *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1335 (11th Cir. 2011)).

Prior to dismissing a civil action *sua sponte*, a court normally must provide the plaintiff "with notice of its intent to dismiss and an opportunity to respond. *Surtain v. Hamlin Terrance Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). "An exception to this requirement exists, however, when amending the complaint would be futile, or when the complaint is patently frivolous." *Id.* Regarding affirmative defenses, a

district court may dismiss a complaint for failure to state a claim based upon an affirmative defense "when the defense is an obvious bar given the allegations," even if the defendant has not asserted the defense. *Sibley v. Lando*, 437 F.3d 1067, 1070 n.2 (11th Cir. 2005).

Finally, a district court's determination that it lacked subject matter jurisdiction over a claim in light of the *Rooker-Feldman* doctrine is reviewed *de novo*. *See Mickens v. 10th Judicial Circuit Court*, 458 F. App'x 839, 841 (11th Cir. 2012).

B. Dismissal was proper as to Burlison's entire action, on the basis of absolute and qualified immunity

I. Absolute immunity generally

With his Complaint, Burlison sought only monetary relief and did not seek any equitable relief. While court clerks are not entitled to absolute immunity from claims for equitable relief, they do "have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction, and . . . qualified immunity from all other actions for damages." *Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981); *see also Dean v. Hurley*, No. 18-13095-B, 2018 WL 5292047, at *1 (11th Cir. Oct. 10, 2018) (finding clerk's office employees entitled to immunity from suit because "the allegations against them arose out of actions they took at the direction of" a judge); *Wright v. Miranda*, 740 F. App'x 692, 694 (11th Cir. 2018) (finding court clerks entitled to absolute immunity for actions taken at the direction of a judge); *Roland v. Phillips*, 19 F.3d 552, 554 n.4 (11th Cir. 1994) ("When an official acts pursuant to a direct judicial order, absolute quasi-judicial immunity is obvious.").

Burlison does correctly note that courts have previously "taken a dim view of dismissing a plaintiff's claims on the ground of either absolute or qualified immunity without conducting a hearing." *Tarter*, 646 F.2d at 1012 n.3. However, where, as here, the acts with which the defendant official is charged "are so plainly within the usual powers of [her] office[] that the court could take judicial notice of the facts necessary to its finding of absolute immunity," dismissal on the basis of absolute or qualified immunity is proper, even without conducting a hearing. *Id.*

II. Qualified immunity generally

"Qualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." *Andujar v. Rodriguez*, 486 F.3d 1199, 1202 (11th Cir. 2007) (internal quotations omitted). "The immunity protects all but the plainly incompetent or those who knowingly violate the law." *Jordan v. Mosley*, 487 F. 3d 1350, 1354 (11th Cir. 2007) (internal quotations omitted). "Because qualified immunity is a defense not only from liability, but also from suit, it is important for a court to ascertain the validity of a qualified immunity defense as early in the lawsuit as possible." *Lee v. Ferraro*, 284 F. 3d 1188, 1194 (11th Cir. 2002) (internal quotations omitted; *see also Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009). Qualified immunity "represents the norm" for government officials exercising discretionary authority. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982).

III. The discretionary function inquiry

In determining whether the official's act was done in the performance of a discretionary function, courts assess whether the activity is of the type that fell within the official's job responsibilities. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11th Cir. 2004). The inquiry is two-fold. *Id.* First, a court inquires whether the government actor was performing a legitimate job-related function (that is, pursuing a job-related goal), and second, whether the means by which the government actor pursued the goal were within his or her power to utilize. *Id.* A court looks to the general nature of the action, temporarily putting aside the fact that it may have been committed for an unlawful purpose, in an unlawful manner, to an unlawful extent, or under inappropriate circumstances. *Id.* at 1266.

IV. Burlison's burden to establish a violation and clearly established law

If a defendant demonstrates he or she was engaged in a discretionary function, the burden shifts to the plaintiff to show the defendant is *not entitled* to qualified immunity. *Holloman*, 370 F.3d at 1264. "To overcome qualified immunity, the plaintiff must satisfy a two prong test; he must show that: (1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." *Id.* A court may begin the qualified immunity analysis with either prong, at its discretion. *See Pearson*, 555 U.S. at 236; *Maddox v. Stephens*, 727 F.3d 1109, 1120–21 (11th Cir. 2013). For a right to be clearly established, its contours must be sufficiently clear that a reasonable officer would understand that what she is doing violates that right. *Hope v. Pelzer*, 536 U.S. 730, 739 (2002); *Bates v. Harvey*,

518 F.3d 1233, 1247–48 (11th Cir. 2008). A plaintiff must show "in the light of pre-existing law the unlawfulness was apparent." *Id.* at 1248. The "salient question" for the "clearly established" analysis is whether the state of the law at the time the official acted gave her "fair warning" that her conduct was unconstitutional. *Id.*[1]

The Eleventh Circuit uses two methods to determine whether a reasonable official would understand his conduct violates federal law. *See Carollo v. Boria*, 833 F.3d 1322, 1333 (11th Cir. 2016). The first asks whether binding opinions from the U.S. Supreme Court, the Eleventh Circuit, and the highest court in the state where the action is filed gave the defendant fair warning that his treatment of the plaintiff was unconstitutional. *Id.* The second category is "narrow," and asks whether a public official's conduct lies so obviously at the very core of what federal law prohibits that the unlawfulness of the conduct was readily apparent to the public official, notwithstanding the lack of fact-specific case law on point. *Id.*; *Maddox*, 727 F.3d at 1121.

"Fair warning and notice" requires that existing precedent must have placed the statutory or constitutional question beyond debate—there must exist a robust consensus of cases of persuasive authority. *Carollo*, 833 F. 3d at 1333. The Supreme

[1] *See also Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("[E]xisting precedent must have placed the statutory or constitutional question beyond debate."); *Sherrod v. Johnson*, 667 F.3d 1359, 1363 (11th Cir. 2012) ("For the law to be clearly established, the law 'must have earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that 'what he is doing' violates federal law.'").

Court has repeatedly directed courts not to define clearly established law at a high level of generality. *Id.*; *see also White v. Pauly*, 137 S. Ct. 548, 551–52 (2017). If reasonable public officials could differ on the lawfulness of a defendant's actions, then the defendant did not have fair warning and notice and is therefore entitled to qualified immunity. *Carollo*, 833 F. 3d at 1334.

V. Angus is entitled to both absolute and qualified immunity for the issuance of the subject Writ

Both the Eleventh Circuit and the District Court correctly determined that based on the facts alleged in this matter, Angus is clearly entitled to absolute judicial immunity and qualified immunity for the issuance of the subject Writ.

It is obvious from Burlison's allegations and the face of the challenged Writ that in issuing the Writ, Angus was acting in her role as a deputy clerk of the Marion County Circuit Court. Angus issued the subject Writ on September 28, 2012, with the proviso that the Writ was to be "no earlier than September 29, 2012 per Florida Statute § 723.062(1)." (R. 1, p. 4). Section 723.062(1) provides that "[i]n an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff, describing the lot or premises and commanding the sheriff to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 10 days from the date judgment is granted." In other words, pursuant to § 723.062(1), in issuing the subject Writ, Angus was acting in her capacity as a deputy clerk of court, as such a Writ, pursuant to § 723.062(1), may only be issued by a clerk.

Furthermore, in issuing the challenged Writ in favor of Burlison's landlords, Angus was merely following a direct order of a Marion County, Florida judge. Such fact is apparent from the filings and orders entered in the related matter of *Burlison v. Williams*, Middle District of Florida Case No. 5:12-cv-00560-WTH-PRL, of which the District Court in the instant matter properly exercised judicial notice. Therein, the District Court in *Williams* was presented with the facts from the underlying eviction proceeding in which Angus issued the subject Writ: *Jeffrey W. Benefield and Cassandra K. Benefield v. Terry A. Burlison*, Case No. 12-1901-SC. In that eviction proceeding, on September 19, 2012, the Marion County court entered a default judgment of possession in favor of Burlison's landlords. (*Williams*, R. 23-2, p. 19–20). The Final Judgment for Possession entered in that matter clearly stated, "The Clerk of Court is ordered to issue forthwith a Writ of Possession to the Marion County Sheriff's Department in compliance with the foregoing, commanding that said Plaintiff be put in possession of the premises. However, pursuant to Fla. Stat. § 723.062(1), said Writ of Possession shall not issue earlier than September 29, 2012, which is 10 days from September 19, 2012, the date judgment was granted." (*Williams*, R. 23-4, p. 1–2). In other words, the eviction court noted that judgment had in fact been granted on September 19, 2012, and did in fact direct the clerk to issue a Writ of Possession. (Id.).

In short, the eviction court directed the Marion County Clerk of Court to issue the subject Writ of Possession, with the understanding that it would not issue earlier than September 29, 2012. Pursuant to this direct judicial order, on September 28,

2012, Angus, acting in her capacity as a deputy clerk of court, issued the subject Writ with the following limitation: "no earlier than September 29, 2012 per Florida Statute § 723.062(1))." (R. 1, p. 4). Accordingly, in issuing the subject Writ, Angus was merely engaging in an act she was required to do under court order and at a judge's direction. Thus, Angus is entitled to absolute immunity from Burlison's § 1983 claim for monetary damages. *See Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981); *Roland v. Phillips*, 19 F.3d 552, 554 n.4 (11th Cir. 1994) ("When an official acts pursuant to a direct judicial order, absolute quasi-judicial immunity is obvious.").

Additionally, Angus is also entitled to qualified immunity for the issuance of the subject Writ. In issuing the Writ, Angus was clearly acting in her discretionary authority. She was performing a legitimate job-related function, as the Marion County Court's judgment and Fla. Stat. § 723,062(1) required her to issue a writ of possession. Further, issuance of the Writ was within her power to utilize as, once again, § 723.062(1) empowered the clerk to issue a writ of possession. Accordingly, in issuing the Writ, Angus was acting in her discretionary authority. *See Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11th Cir. 2004).

As a result, the burden shifts to Burlison to show Angus is *not entitled* to qualified immunity. *Id.* at 1264. To overcome qualified immunity, Burlison must show (1) that Angus violated a constitutional right, and (2) that such right was clearly established at the time of the alleged violation. *Id.*

Here, Burlison is unable to satisfy either prong. As to the first prong, the allegations and facts of this matter show that no constitutional violation occurred.

Contrary to Burlison's claims, the subject Writ was entered at the direction of the Marion County Court and pursuant to the entry of judgment in favor of Burlison's landlords. Further, the subject Writ on its face complies with the § 723.062(1) 10-day waiting period, as it explicitly limited execution of the Writ to "no earlier than September 29, 2012 per Florida Statute § 723.062(1))." (R. 1, p. 4).

As to the second prong, even if Burlison was able to establish that the subject Writ did not comply with the limitations of § 723.062(1), Burlison has pointed to no binding opinions from this Court, the Eleventh Circuit, or the Florida Supreme Court that would give Angus fair warning that failure to comply with § 723.062(1) constituted a violation of a person's Fourth Amendment rights. To the contrary, pursuant to *Tarter v. Hury*, court clerks hold "absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction, and only qualified immunity *from all other actions for damages*." *Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981) (emphasis added). Accordingly, contrary to Burlison's arguments, the only fair warning provided to Angus in this matter was that in issuing the subject Writ, she would be entitled to, at a minimum, qualified immunity for Burlison's action for damages. In short, Burlison is not able to satisfy his burden of showing that Angus is not entitled to qualified immunity. As such, the Eleventh Circuit and the District Court did not err in finding Angus entitled to qualified immunity.

Because Angus, as a deputy clerk of court, was entitled to absolute judicial immunity and qualified immunity on Burlison's claim for money damages, Burlison's

claim against Angus was patently frivolous and, therefore, the Eleventh Circuit correctly affirmed the District Court's dismissal of the case without notice or an opportunity for Burlison to respond. Accordingly, Burlison's petition must be denied.

VI. The lower courts properly took judicial notice of the filings and orders issued in *Burlison v. Williams*

Burlison appears to challenge the fact that the District Court took judicial notice of the filings and orders entered in the related *Burlison v. Williams* matter. He argues, "Whether the court clerk here enjoy [sic] either absolute or qualified [immunity] depends on facts not discernible from the record and of which the district court did not, and probably could not, take judicial notice." (Burlison Petition, p. 9). However, the Middle District of Florida was entitled to take judicial notice of its orders and the filings entered in its prior case.

"A court may take judicial notice of its own records and the records of inferior courts." *United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987); *see also ITT Rayonier Inc. v. United States*, 651 F.2d 343, 345 n.2 (5th Cir. 1981) (same); *Kinnett Dairies, Inc. v. J.C. Farrow*, 580 F.2d 1260, 1277 n.33 (5th Cir. 1978) ("We have held that it is not error for a court to take judicial notice of related proceedings and records in cases before that court.") (internal quotations omitted); *Aloe Crème Labs., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970) ("The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time."); *see also Naslund v. Liberty Life Assurance Co. of Bos.*, No. 8:03CV1357T27MAP, 2006 WL 1281664, at *2 n.4 (M.D. Fla. May 10, 2006) (taking "judicial notice of all pleadings, filings and orders in the previous cases").

Accordingly, both the Middle District of Florida and the Eleventh Circuit were entitled to take judicial notice of all pleadings, filings, and orders entered in the previous related case of *Burlison v. Williams*, including the fact that the court in Marion County Case No. 12-1901-SC issued a default judgment of possession in favor of Burlison's landlords, that said court ordered the clerk of court to issue forthwith a Writ of Possession, and that in its Final Judgment for Possession, said court clearly acknowledged that judgment in the matter had been granted on September 19, 2012, well before the issuance of the subject Writ. (*Williams*, R. 23-2, p. 19–20; *Williams*, R. 23-4, p. 1–2). Thus, neither the Eleventh Circuit nor the District Court erred in finding that in issuing the challenged Writ of Possession, Angus was merely following a direct order of a Marion County, Florida judge.

VII. Burlison has cited no legal authority establishing a conflict of law or a misapplication of law

Burlison appears to assert several arguments as to how the decisions of the Eleventh Circuit and the District Court are somehow in conflict with or fail to properly apply the jurisprudence of § 1983 cases involving the application of absolute and/or qualified immunity. However, the authorities cited by Burlison are either wholly inapplicable or are in conformity with the lower courts' decisions.

First, Burlison argues that the Eleventh Circuit's decision somehow "contravenes" this Court's prior § 1983 rulings. He first argues the Eleventh Circuit failed to analyze "whether the plaintiff has been deprived of a right secured by the Constitution and laws," as he claims is required under *Baker v. McCollan*, 443 U.S. 137, 140 (1979). However, *Baker* is inapposite as it analyzed the constitutionality of

the claimant's § 1983 false imprisonment claim and did not include an analysis of absolute or qualified immunity. Further, as noted above, the qualified immunity analysis allows the lower court to choose whether to begin the analysis with the first or second prong of the plaintiff's burden. *See Pearson v. Callahan*, 555 U.S. 223, 236; *Maddox v. Stephens*, 727 F.3d 1109, 1120–21 (11th Cir. 2013). Accordingly, Burlison's reliance on *Baker* is wholly inapposite to the issues of this case.

Ultimately, he argues that the lower courts' reliance on *Tarter* is erroneous as, according to Burlison, "there is no order from a Marion County judge directing [Angus] to issue a writ of possession violating the mandatory statutorily imposed 10 day waiting period." (Burlison Petition, p. 6). However, this statement ignores the fact that an order *was* entered directing the clerk of court to issue a writ, as well as the fact that the subject Writ *did* comply with the 10-day limitations period under Fla. Stat. § 723.062(1). Regardless, even if the subject Writ did not comply with this limitations period, Angus's actions were clearly performed at the direction of the Marion County court's order, thus entitling her to absolute immunity. *See Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981). Likewise, for the reasons stated above, Burlison has not satisfied his burden of showing that Angus is *not* entitled to qualified immunity for the issuance of the subject Writ. *See Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004).

Next, Burlison argues that the lower courts' decisions are "at odds with established principles of law." (Burlison Petition, p. 7). However, for support, he merely cites *Trask v. Franco*, 446 F.3d 1036, 1046 (10th Cir. 2006) for the proposition

that the requisite § 1983 causal connection is satisfied "if the defendant[s] set in motion a series of events that the defendant[s] knew or reasonably should have known would cause others to deprive the plaintiff of [his] constitutional rights." *Id.* (internal quotations omitted). He also cites *Monroe v. Pape*, 365 U.S. 167, 187 (1961) for a proposition seemingly also related to causation in § 1983 claims. However, both authorities are wholly inapposite as a determination regarding causation was never the basis for either of the lower courts' decisions. Instead, their decisions were based on the application of absolute and qualified immunity and the *Rooker-Feldman* doctrine. Accordingly, Burlison's reliance on this dicta from *Trask* and *Monroe* is wholly inapposite to this matter.

Next, Burlison argues that the dismissal of his case on the basis of Angus's immunity was incorrect. In particular, he appears to take issue with the fact that the District Court dismissed the case *sua sponte* without notice or an opportunity to respond. (Burlison Petition, p. 8). He also appears to argue that Angus, in issuing the subject Writ, somehow exceeded her authority as a deputy clerk. For support, Burlison cites *First Nat'l Bank v. Filer*, 145 So. 204 (Fla. 1933).

As an initial, it is unclear how *Filer* supports the proposition for which Burlison cites it. Regardless, a review of *Filer* shows that it does not involve any consideration of the application of absolute immunity, qualified immunity, or the *Rooker-Feldman* doctrine. Nor does it even involve any claim under 42 U.S.C. § 1983 or any alleged violation of a constitutional right. Accordingly, Burlison's reliance on *Filer* is wholly inapposite to this matter.

Regardless, Burlison fails to show how Angus allegedly exceeded her authority as a deputy clerk. For the reasons stated above, in issuing the subject Writ, Angus was merely engaging in an act she was required to do under court order and at a judge's direction. Thus, Angus is entitled to absolute immunity from Burlison's § 1983 claim for monetary damages. *See Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981). Further, Burlison's arguments again fail to satisfy his burden of showing that Angus is *not* entitled to qualified immunity for the issuance of the subject Writ. *See Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004).

Further, regarding the issue of the District Court's *sua sponte* dismissal, as explained above, such is appropriate where, as here, the complaint is patently frivolous. *See Surtain v. Hamlin Terrance Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). Accordingly, in finding that the action was patently frivolous, the District Court did not err by dismissing the case *sua sponte*.

Next, Burlison argues that the Eleventh Circuit misapplied absolute and qualified immunity under *Tarter*. He specifically argues, "Whether the court clerk here enjoy [sic] either absolute or qualified [immunity] depends on facts not discernible from the record and of which the district court did not, and probably could not, take judicial notice." (Burlison Petition, p. 9). However, for the reasons stated above, the lower courts were entitled to take judicial notice of the pleadings, filings, and orders entered in the Middle District of Florida prior related case of *Burlison v. Williams*, which clearly showed that Angus did in fact issue the subject Writ pursuant to the direction of the eviction court's default judgment of possession. Based on that

showing, for the reasons stated above, Angus was clearly entitled to both absolute and qualified immunity.

Finally, Burlison argues that the Eleventh Circuit's decision "is an outlier among the decisions of the federal courts of appeal." (Burlison Petition, p. 9). However, Burlison cites no legal authority to support this contention. For the reasons stated above, both the Eleventh Circuit and the District Court correctly found that Angus is entitled to both absolute and qualified immunity as to Burlison's § 1983 claim for monetary relief. As such, Burlison's petition must be denied.

C. Dismissal was proper as to Burlison's entire action, on the basis of the *Rooker-Feldman* Doctrine

Finally, the District Court's dismissal of this action was proper based on the application of the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine prevents federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "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. Corp.*, 544 U.S. 280, 284 (2005). "The doctrine extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are 'inextricably intertwined' with a state court judgment. A federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000). The Eleventh Circuit has "advanced two scenarios where a federal claim is considered inextricably intertwined with the state court judgment: (1) where the success of the federal claim

would effectively nullify the state court judgment; and (2) where the federal claim succeeds only to the extent that the state wrongly decided the issues." *Springer v. Perryman*, 401 F. App'x 457, 458 (11th Cir. 2010) (internal quotations omitted).

Here, Burlison's claim against Angus is merely another attempt to overrule or interfere with the Marion County eviction court's proceedings and judgment. Success on this claim would effectively nullify the state court's judgment of possession and the subject Writ which the state court explicitly ordered. Accordingly, the District Court correctly found that it lacks subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine.[2]

9. CONCLUSION

Angus is entitled to both absolute immunity and qualified immunity for the issuance of the subject Writ of Possession. Consequently, Angus cannot be liable for Burlison's claim under 42 U.S.C. § 1983 for an alleged violation of his Fourth Amendment rights. Additionally, the District Court properly found that it lacks subject matter jurisdiction over this action pursuant to application of the *Rooker-*

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[2] Further, to the extent Burlison may challenge the District Court's reliance on the filings, pleadings, and orders entered in the prior related case of *Burlison v. Williams*, "[a] federal court must always dismiss a case upon determining that it lacks subject matter jurisdiction, regardless of the stage of the proceedings, and facts outside of the pleadings may be considered as part of that determination." *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1331 n.6 (11th Cir. 2001). Accordingly, the District Court, in analyzing subject matter jurisdiction and the application of the *Rooker-Feldman* doctrine, was entitled to consider facts outside of Burlison's Complaint, including the filings, pleadings, and orders entered in the related case of *Burlison v. Williams*.

Feldman doctrine. Accordingly, the action is patently frivolous and, therefore, the District Court's *sua sponte* dismissal was proper. Burlison's petition should be denied.

Respectfully submitted this 4th day of April, 2019.

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