

UNPUBLISHED

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

No. 18-6312

JOSEPH CHARLES TICE,

Plaintiff - Appellant,

v.

RUPERT MARKLEY DENNIS, JR.,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Cameron McGowan Currie, Senior District Judge. (3:18-cv-00368-CMC)

Submitted: July 26, 2018

Decided: July 31, 2018

Before GREGORY, Chief Judge, FLOYD, Circuit Judge, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Joseph Charles Tice, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joseph Charles Tice appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 (2012) complaint under 28 U.S.C. § 1915A(b) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Tice v. Dennis*, No. 3:18-cv-00368-CMC (D.S.C. Mar. 20, 2018). 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

FILED: July 31, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6312
(3:18-cv-00368-CMC)

JOSEPH CHARLES TICE

Plaintiff - Appellant

v.

RUPERT MARKLEY DENNIS, JR.

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Joseph Charles Tice,

Plaintiff

v.

Civil Action No. 3:18-cv-00368-CMC

Honorable Judge R. Markley Dennis,

Defendant

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

☐ the plaintiff (*name*) _____ recover from the defendant (*name*) _____ the amount of _____ dollars (\$___), which includes prejudgment interest at the rate of ___ %, plus postjudgment interest at the rate of ___ %, along with costs.

☒ The plaintiff, Joseph Charles Tice, shall take nothing of the defendant, Honorable Judge R. Markley Dennis, and this action is dismissed without prejudice.

This action was (*check one*):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Honorable Cameron McGowan Currie, Senior United States District Judge, presiding, adopting the Report and Recommendation of the Honorable Paige J. Gossett, United States Magistrate Judge, which recommended dismissing the complaint without prejudice.

Date: March 20, 2018

ROBIN L. BLUME, CLERK OF COURT

s/B. Goodman

Signature of Clerk or Deputy Clerk

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

Joseph Charles Tice,

Plaintiff,

vs.

Honorable Judge R. Markley Dennis,

Defendant.

Civil Action No. 3:18-cv-368-CMC

ORDER

This matter is before the court on Plaintiff's complaint pursuant to 42 U.S.C. § 1983, alleging violation of his constitutional rights in the state court when his probation was revoked based on failure to pay probation fees. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings. On March 6, 2018, the Magistrate Judge issued a Report recommending this matter be summarily dismissed without prejudice, and without issuance and service of process. ECF No. 8. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections on March 15, 2018. ECF No. 10.

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. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b).

After considering *de novo* the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the Report's recommendation that the Complaint be dismissed.

In Plaintiff's objections, he cites *Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980), for the proposition that judicial immunity is not absolute. ECF No. 10. While Plaintiff next cites *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986), noting *Rankin* was described as "unnecessarily restrictive," he also states "Rankin's ultimate result was not changed." ECF No. 10 at 2. However, *Ashelman* held "[a]s long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies." 793 F.2d at 1078. That court explicitly held "[t]o the extent that *Rankin* and *Beard* are to the contrary, they are overruled." *Id.*

Plaintiff argues revocation of his probation was unlawful, leading to multiple violations of his constitutional rights. He also argues Judge Dennis acted without jurisdiction; thus, the complained of action was not a "judicial act." ECF No. 10 at 5-8 ("Judge . . . stepped [sic] completely out of the jurisdiction of the court and committed a criminal act when he unlawfully [sic] revoked my probation and unlawfully [sic] put me in prison by breaking [sic] the law.").

The Supreme Court has held judicial immunity overcome only when a judge undertakes a nonjudicial action (i.e., actions not taken in the judge's judicial capacity), or when judicial actions are "taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). It is clear the actions alleged in this case were judicial actions, as Plaintiff was before Judge Dennis for a criminal probation revocation. Further, it is clear that Plaintiff Judge Dennis' actions were not "taken in the complete absence of all jurisdiction." Even if the judge erred in revoking

Plaintiff's probation for failure to pay fees without a finding the failure was willful, immunity still applies. *Id.* at 12-13; *see also Pierson v. Ray*, 386 U.S. 547, 554 (1967) ("Immunity applies even when the judge is accused of acting maliciously and corruptly."). Just because Plaintiff alleges Judge Dennis revoked his probation improperly, contrary to law, does not mean Judge Dennis did not have subject matter jurisdiction. This objection is overruled.

Plaintiff next argues he brought suit against Judge Dennis in his individual capacity and thus he is not immune from personal liability under the Eleventh Amendment. ECF No. 10 at 8. "Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits, in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). It is true Plaintiff brought his suit against Judge Dennis in his individual capacity, and as such Defendant is not shielded by Eleventh Amendment immunity. However, judicial immunity still applies. This objection is overruled.

Accordingly, the court adopts the Report by reference in this Order. Plaintiff's Complaint is hereby dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 20, 2018

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

Joseph Charles Tice,)	C/A No. 3:18-368-CMC-PJG
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Honorable Judge R. Markley Dennis,)	
)	
Defendant.)	
_____)	

The plaintiff, Joseph Charles Tice, a self-represented state prisoner, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff files this action *in forma pauperis* under 28 U.S.C. §§ 1915 and 1915A. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). Having reviewed the Complaint in accordance with applicable law, the court concludes that it should be summarily dismissed without prejudice and without issuance and service of process.

I. Procedural Background

Plaintiff brings claims of constitutional violations pursuant to 42 U.S.C. § 1983 against the South Carolina circuit court judge who revoked his probation based on Plaintiff's failure to pay probation fees, which resulted in Plaintiff's incarceration. (Compl., ECF No. 1 at 5.) Plaintiff indicates the South Carolina Court of Appeals reversed the circuit judge's revocation of Plaintiff's probation because the judge did not make a finding that Plaintiff's failure to pay fees was willful. (Id.) Plaintiff claims the circuit judge's decision violated several constitutional rights and he seeks damages for those violations. (Id. at 4, 7.)

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of the Prison Litigation Reform Act (“PLRA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), including 28 U.S.C. § 1915 and 28 U.S.C. § 1915A. The Complaint has been filed 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, and is also governed by 28 U.S.C. § 1915A, which requires the court to review a complaint filed by a prisoner that seeks redress from a governmental entity or officer or employee of a governmental entity. See McLean v. United States, 566 F.3d 391 (4th Cir. 2009). Section 1915A requires, and § 1915 allows, a district court to dismiss the case upon a finding that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A(b).

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis

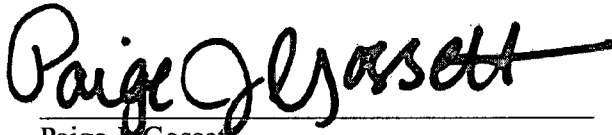
A legal action under 42 U.S.C. § 1983 allows “a party who has been deprived of a federal right under the color of state law to seek relief.” City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). In this action, Plaintiff alleges that the Honorable R. Markley Dennis, South Carolina Circuit Court Judge, violated multiple provisions of the United States Constitution when he revoked Plaintiff’s probation. However, the court finds that Plaintiff’s Complaint should be summarily dismissed because the defendant, as a judge, is immune from suit.

It is well settled that judges have absolute immunity from a claim for damages arising out of their judicial actions. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (providing that judges are entitled to absolute immunity from suit, not just the ultimate assessment of damages, for judicial actions taken within their jurisdiction); Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985) (“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.”). Judicial immunity is not pierced by allegations of corruption or bad faith, nor will a judge “be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.” Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). Because judicial immunity is a protection from suit, not just from ultimate assessment of damages, Mireless, 502 U.S. at 11, Plaintiff’s claims against the defendant are barred, and this action should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii) and § 1915(b)(2).

III. Conclusion

Based on the foregoing, the court recommends the Complaint be dismissed without prejudice and without issuance and service of process.

March 6, 2018
Columbia, South Carolina


Paige J. Gossett
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."*

**Additional material
from this filing is
available in the
Clerk's Office.**