

FILED: January 21, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-362
(5:19-cv-00330-BO)

In re: ARTHUR O. ARMSTRONG,

Petitioner.

ORDER

Arthur O. Armstrong seeks leave to appeal the district court's order and judgment dismissing his complaint. Because the district court did not certify an appeal from the order and judgment would not be frivolous, the court denies Armstrong's motion.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Judge King.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-330-BO

ARTHUR O. ARMSTRONG,)
Plaintiff,)
v.)
WILSON COUNTY, CALVIN WOODARD,)
NASH COUNTY, KEITH STONE,)
MAGISTRATE'S OFFICES, JOHN DOE, JIM)
COE,)
Defendants.)

ORDER

This matter is before the Court *sua sponte* on plaintiff's complaint and the Court's permanent pre-filing injunction. For the reasons that follow, plaintiff's complaint is dismissed and he is sanctioned in the amount of \$1,200.00.

BACKGROUND

In August 2019, plaintiff initiated this action against Wilson County and Nash County, their respective sheriffs, Calvin Woodard and Keith Stone, and, it appears, one or more unnamed magistrate judges. [DE 1]. Plaintiff appears to allege at least 22 separate constitutional injuries, brought pursuant to 42 U.S.C. §§ 1985 and 1986, stemming from his February 2019 arrest. *Id.*

Plaintiff is a well-known serial litigant. *See Armstrong v. Virginia*, No. 3:10-CV-802-REP, 2011 WL 1261628, at *4, 7 (E.D. Va. Mar. 16, 2011) (cataloguing plaintiff's actions and notice that he "may be the most prolific serial-filer in the United States"). In March 2013, the Court entered a superseding permanent injunction against plaintiff, prohibiting him from filing any documents, even if he's paid a filing fee, unless the Court concludes that his complaint "specifically identif[ies] the law(s) which Armstrong alleges was (were) violated, and . . . allege[s]

all facts with specificity.” *Armstrong v. Woodard*, No. 5:12-CV-805-F, DE 26 (E.D.N.C. Mar. 29, 2013). Thus, before plaintiff’s case goes forward, the Court must review the allegations in plaintiff’s complaint and determine whether he has complied with the requirements of the superseding permanent injunction.

DISCUSSION

“[F]rivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid.” *Ross v. Baron*, 493 F. App’x 405, 406 (4th Cir. 2012) (per curiam) (citing *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 307–08 (1989)). The superseding permanent injunction requires this Court to determine whether plaintiff “specifically identif[ies] the laws which Armstrong alleges was (were) violated” and determine whether plaintiff has “allege[d] all facts with specificity.” *Armstrong v. Woodard*, No. 5:12-CV-805-F, DE 26 (E.D.N.C. Mar. 29, 2013). If plaintiff has, the Court must then decide if the complaint “is not otherwise repetitious or frivolous.” *Id.* If the Court concludes that plaintiff has not specifically alleged which laws were violated and has not alleged all facts with specificity, or has filed an otherwise repetitious or frivolous complaint, then the Court “will dismiss the complaint and *will sanction Armstrong in an amount three times the district court filing fee.*” *Id.* (emphasis in original).

A complaint must state a claim for relief that is facially plausible. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Facial plausibility means that the court can “draw the reasonable inference that the defendant is liable for the misconduct alleged,” as merely reciting the elements of a cause of action with the support of conclusory statements does not suffice. *Iqbal*, 556 U.S. at 678. The Court need not accept the plaintiff’s legal conclusions drawn from the facts, nor need it accept unwarranted inferences, unreasonable conclusions, or arguments. *Philips v. Pitt*

County Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009). “[A] *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). But *Erickson* does not “undermine [the] requirement that a pleading contain ‘more than labels and conclusions.’” *Giarranto v. Johnson*, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting *Bell Atlantic*, 550 U.S. at 555).

Upon careful review of plaintiff’s complaint, the Court is compelled to conclude that plaintiff has not alleged all facts with specificity and, moreover, has filed a complaint that is generally frivolous. First, plaintiff’s complaint contains only vague allegations that defendants “acted in a conspiracy” and “failed to conform to the requirements of the federal constitution and laws of the United States” in arresting him and detaining him. [DE 1, p. 3]. Plaintiff alleges a litany of constitutional violations, repeatedly citing the Fourth and Fourteenth Amendments, and goes so far as to accuse defendants of “arbitrariness, capriciousness, fraud, malice, trickery, harassment, falsity, gross negligence, deceit, RICO, carjacking, kidnapping, extortion, pattern of racketeering activity and obstruction of justice.” *Id.* But plaintiff does not allege the factual basis for his myriad claims with anything resembling specificity.

Second, plaintiff’s complaint is frivolous. Plaintiff’s complaint contains many of the same conclusory, boilerplate legal assertions that his previous complaints have included. *See Armstrong v. North Carolina*, 5:13-CV-627-D, DE 1 (E.D.N.C. May 27, 2014) (alleging that defendants engaged in a conspiracy when they “failed to conform to the requirements of the federal constitution and laws of the United States” and acted with “arbitrariness, capriciousness, malice, fraud, extortion, defamation, gross negligence, trickery . . .”). These cursory allegations, coupled with the near-complete lack of factual content, do not plausibly state any claim upon

which relief can be granted. Moreover, plaintiff is once again suing Calvin Woodard, whom he has unsuccessfully attempted to sue numerous times in the past. *See, e.g., Armstrong v. Woodard*, 5:12-CV-805-F (E.D.N.C. Mar. 3, 2013); *Armstrong v. Woodard*, 5:12-CV-807-F (E.D.N.C. Mar. 3, 2013). Plaintiff's complaint is frivolous and does not comply with the Court's pre-filing injunction.

Accordingly, consistent with the Court's superseding permanent injunction, plaintiff's complaint must be dismissed and he must be sanctioned in the amount of three times the filing fee. As such, plaintiff is sanctioned in the amount of \$1,200.00. Additionally, consistent with the injunction, the Court concludes that an appeal from this order would be meritless and that no further filings in this case will be accepted.

CONCLUSION

For the above reasons, plaintiff's complaint is DISMISSED and plaintiff is SANCTIONED in the amount of \$1,200.00. The Clerk is DIRECTED to close the case.

SO ORDERED, this 13 day of August, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

FILED: February 25, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-362
(5:19-cv-00330-BO)

In re: ARTHUR O. ARMSTRONG

Petitioner

O R D E R

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Judge King.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C

Constitutional and Statutory Provisions Involved

FOURTEENTH AMENDMENT

All persons born or nationalized in the United States and is subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or force any laws which shall abridge any privileges or immunity of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

FOURTH AMENDMENT

Seizures to be conducted on upon issuance of a warrant juridically sanctioned by probable cause supported by an oath or affirmation particularly describing the place to be searched and the person or thing to be seized.

42 U.S.C. 1983 Every person who is under color of any statute, ordinance, regulation, custom, usage of any State or the District of Columbia subject or caused to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights privileges or immunity secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other property proceeding for redress.

42 U.S.C. 1985 &1986

If two or more persons conspire to prevent by force, intimidation, or threats; in the furtherance of such a conspiracy, where two or more persons conspired to go in disguise on the highway or the premise thereof for the purpose of depriving, either directly or indirectly the equal protection of the law, or of equal privileges and immunities under the law; or for the purpose of preventing or hindering the constituted authorities within any State or Territory from giving or securing to any citizen within any State or Territory the equal protection of the law shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Rule 56 (a) Summary Judgment – A party may move for summary judgment on which judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment in his favor as matter of law. Judgment

Rule 60(b)(6) states that a court may grant relief from a judgment on any reason justifying relief from the operation of the judgment. Relief under Rule 60(b)(6) is extraordinary relief, and it is granted in the interest of justice. This rule is essentially one of equity and fairness.

Rule 15(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.

APPENDIX D