No. 19-1277

In the
Supreme Court of the United States

DAVID THORPE,
Petitioner,
v.

DEXTER DUMAS, and individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,
Respondents.

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

BRIEF IN OPPOSITION

REGINALD C. MARTIN
Senior Assistant City Attorney
Counsel of Record

STACI J. MILLER
Assistant City Attorney

City of Atlanta Law Department
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303
(404) 546-4100
remartin@atlantaga.gov
sjmiller@atlantaga.gov

Counsel for Respondent Dexter Dumas

June 11, 2020

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED[1]

1. WHETHER, PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 4 AND 12(B)(5), RESPONDENT DUMAS IS ENTITLED TO DISMISSAL OF PETITIONER'S CLAIMS AGAINST HIM DUE TO INSUFFICIENT SERVICE OF PROCESS?

2. WHETHER THE ELEVENTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(B)?

---

[1] Respondent Dumas also sought dismissal of the claims against him under Fed. R. Civ. P. 12(b)(6), for failure to state a claim, and statute of limitations grounds. However, the only issue on appeal in this matter is whether the Eleventh Circuit properly affirmed the District Court's grant of Respondent Dumas' Motion to Dismiss on the issue of insufficient service of process. Appendix to Appellant David Thorpe's Brief ("Pet. App.") at 6a.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Dexter Dumas ("Respondent Dumas") respectfully opposes Petitioner's Petition for Writ of Certiorari ("Petition") which seeks to reverse the September 17, 2019 Order ("Order") of the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") in this case. Petitioner's Appendix, hereinafter "Pet. App.", at 1a – 11a. As the Eleventh Circuit correctly held, Petitioner's failure to serve Respondent Dumas pursuant to Federal Rule of Civil Procedure 4 necessitated the dismissal of Petitioner's Amended Complaint and precluded the District Court from addressing the merits of Petitioner's Amended Complaint.

STATEMENT OF THE CASE

I. PROCEDURAL POSTURE

Petitioner filed his Complaint for Damages and Jury Trial Demand, hereinafter "Complaint", on August 10, 2018. He placed a copy of the Complaint and Summons in the mail addressed to 2315 Donald L. Hollowell Parkway NW, Atlanta, Georgia 30318 (also known as "Atlanta Police Department Zone One Precinct") on or about August 20, 2018. After Respondent Dumas filed his first Motion to Dismiss, Petitioner filed his Amended Complaint on September 19, 2018. Respondent Dumas timely filed his Motion to Dismiss Plaintiff's First Amended Complaint and Incorporated Brief by Special Appearance ("Dumas Motion to Dismiss") on October 19, 2018, requesting that the District Court grant his Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5)

and (6), for insufficient service of process and failure to state a claim for which relief can be granted. Respondent's Appendix 42, hereinafter "Resp. App.". To date, Petitioner has failed to personally serve Respondent Dumas with a copy of the Complaint and Summons.

On November 8, 2018, the District Court, Judge Amy Totenberg presiding, properly granted Respondent Dumas' Motion to Dismiss[2] without prejudice, finding that Petitioner's "attempted service by mail is insufficient under both Federal Rule of Civil Procedure 4 and O.C.G.A. § 9-11-4 (e)(7)." Resp. App. Doc. 30 at 8-9. On November 29, 2018, Petitioner filed his Motion for Relief from Judgment Pursuant to Federal Rule Civil Procedure 60(b), hereinafter "Motion for Reconsideration", which was later denied. Resp. App. 67.

Petitioner timely filed his Notice of Appeal to the Eleventh Circuit on January 8, 2019, twenty-eight (28) days after his Motion for Reconsideration was denied on December 11, 2018. Resp. App. 77. In his Notice of Appeal, Petitioner sought to appeal the District Court's rulings on both Respondent Dumas' Motions to Dismiss and the Motion for Reconsideration. *Id*.

On September 17, 2019, the Eleventh Circuit entered its Order in the present matter. Pet. App. at 1a – 11a. The Order affirmed the District Court's dismissal of Petitioner's Amended Complaint finding

---

[2] The District Court did not address the merits of Respondent Dumas' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). Resp. App. 54-55.

that Petitioner failed to properly serve Respondent Dumas. *Id.* Petitioner now seeks to reverse the Eleventh Circuit's Order through his Petition for Certiorari.

II. RELEVANT FACTS[3]

Petitioner alleged in his Amended Complaint that Respondent Dumas initiated an arrest warrant against Petitioner in either July or August of 2014. Resp. App. 7. Petitioner further alleged that during this time, Respondent Dumas "knowingly provided the Fulton County Magistrate Court and the [Fulton County District Attorney's Office] with a falsified affidavit to obtain an arrest warrant" against Petitioner. *Id.* at 10. Petitioner filed suit in this matter on August 10, 2018. Resp. App. 43.

Petitioner filed his Complaint for Damages and Jury Trial Demand, on August 10, 2018. Resp. App. 43. Plaintiff placed a copy of the Complaint and Summons in the mail addressed to 2315 Donald L. Hollowell Parkway NW, Atlanta, Georgia 30318 on or about August 20, 2018. After Respondent Dumas filed his first Motion to Dismiss, Petitioner filed his Amended Complaint on September 19, 2018. Resp. App. 1. Petitioner placed a copy of the Amended Complaint and Summons in the mail addressed to Counsel for Respondent Dumas and the Assistant Attorney General. *Id.* at 37. To date, Petitioner has failed to

---

[3] As this appeal arises out of a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the facts as alleged in the Amended Complaint are accepted as true. However, Respondent Dumas does not agree with all the facts as alleged by Petitioner.

personally serve Respondent Dumas with a copy of the Amended Complaint and Summons.

REASONS FOR DENYING PETITIONER'S WRIT

I. THE PETITION SHOULD BE DENIED BECAUSE NO CIRCUIT-SPLIT EXISTS.

A. The Eleventh Circuit, consistent with the Second, Sixth, and Seventh Circuits, held that the defense of insufficient service of process is not waived when alleged at the earliest opportunity.

Petitioner contends that the Eleventh Circuit created a circuit-split by deciding the issue of whether Respondent Dumas waived the defense of insufficient service of process in contradiction to the holdings of the Second, Sixth, and Seventh Circuits. Brief of Petitioner, hereinafter "Pet." at iii. However, this contention is palpably false. In reaching its decision below, the Eleventh Circuit conducted a similar analysis to those used in the Second, Sixth, and Seventh Circuits by looking to whether the defendants raised the issue of insufficient service of process at the earliest opportunity. Pet. App. at 7a. This analysis is consistent with the analyses used in the Second, Sixth, and Seventh Circuits. *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58 (2d Cir. 1999); *Gerber v. Riordan*, 649 F.3d 514 (6th Cir. 2011); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293 (7th Cir. 1993). Thus, Petitioner seeks a Writ of Certiorari based upon a manufactured circuit-split and a misreading of the Eleventh Circuit's holding.

In its Order, the Eleventh Circuit held that "contrary to Thorpe's contentions, neither Dumas, nor

Jenkins, nor Boone, nor Connelly waived service of process." Pet. App. at 7a. This is because "[i]n their original motions to dismiss and their motions to dismiss the first amended complaint – the defendants' first response to each of Thorpe's complaints – all four of them argued that process was insufficient." *Id.* Thus, the Eleventh Circuit held that Respondent Dumas did not waive the defense of insufficient service of process. *Id.* In filing his Motion to Dismiss, Respondent Dumas did not "manifest an intent to submit to the court's jurisdiction". *Gerber*, 649 F.3d at 523. In fact, he did the exact opposite. Respondent Dumas raised the defense of insufficient service of process in his pre-answer motion. Pet. App. at 7a. Thus, the Eleventh Circuit's holding is consistent with jurisprudence in the Second, Sixth, and Seventh Circuits concerning waiver of defenses and should be affirmed. None of the cases presented by Petitioner support or require a different result.

B. The District Court was precluded from addressing the merits of the case by Petitioner's failure to properly serve Respondent Dumas.

Petitioner argues in Questions (B)(2) – (3) that both the District Court and the Eleventh Circuit erred in "purposely not taking into consideration that the Respondent's [sic.] motions… substantially litigated every defense" and "not considering Petitioner's amended complaints." Petitioner's Brief at iv. However, this Court has long held that "[a] court lacks discretion to consider the merits of a case over which it is without

jurisdiction." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981).

"Service of Process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served." *Cullman Med. Center*, 896 F.2d 1313, 1317 (11th Cir. 1990). Therefore, it would have been "improper for the district court to have reached the merits in this case" because it lacked jurisdiction over Respondent Dumas. *Jackson v. Warden, FCC Coleman-USP*, 259 Fed.Appx. 181, 183 (11th Cir. 2007). Despite Petitioner's assertions to the contrary, the District Court and the Eleventh Circuit were without jurisdiction to address the merits of his case because Petitioner did not perfect service upon Respondent Dumas. *Cullman*, 896 F.2d at 1317. As a result, Petitioner's arguments concerning the lower courts "purposely not taking into consideration … [his] motions" are without merit and contrary to legal precedent in both this Court and the lower circuits. Thus, Petitioner's arguments, should not be reconsidered.

II. THE FEDERAL RULES OF CIVIL PROCEDURE 4 AND 5 ARE NOT INTERCHANGEABLE AND PETITIONER MUST FOLLOW BOTH.

The purpose of the Federal Rules of Civil Procedure 4 (hereinafter Rule 4) concerns the commencement of civil actions in the Federal court system. FED. R. CIV. P. 4. The first step in any action is the filing of the complaint. FED. R. CIV. P. 4. Under Rule 4, Plaintiff must provide notice of the filing of the complaint by personally serving the defendant. *Id.* Specifically, Rule

4 requires a plaintiff to serve each defendant with a copy of both the summons and the complaint unless the defendant waives service. *Id*. Service of process can be accomplished by:

> (a) Delivering a copy of the summons and of the complaint to the individual personally; (b) Leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (c) Delivering a copy of each to an agent authorized by appointment or by law to receive service of process. FED. R. CIV. P. 4.

Federal Rule of Civil Procedure 5 (hereinafter Rule 5) governs the filing of ***subsequent*** pleadings after the initial complaint has been filed. FED. R. CIV. P. 5. Specifically, under Rule 5 service is required:

> (1) In General: unless these rules provide otherwise, each of the following papers must be served on every party;
> (B) a pleading filed after the original complaint, unless the court orders otherwise…
> (b) Service: How Made.
> (1) Serving an Attorney: If a party is represented by an attorney, service under this rule muse be made on the attorney unless the court orders service on the party. FED. R. CIV. P. 5.

Petitioner asserts that there is a conflict between Rules 4 and 5 in application. Brief of Petitioner at iv. On its face and in application there are no conflicts between Rule 4 and 5 and a plaintiff must satisfy Rule 4 before reaching Rule 5.

A. Rule 5 does not satisfy the initial service notice required in the commencement of an action in Federal Court.

It is clear to commence a civil action in Federal Court, notice must first be served upon the parties. Rule 4 sets out the proper process for service upon a party. FED. R. CIV. P. 4. Rule 4 requires a Plaintiff in a civil action to personally serve the Defendant with a copy of the Summons and Complaint. *Id*. Here, Petitioner never personally served Respondent with a copy of the Summons and Complaint. Pet. App. at 21b. Petitioner has neither complied nor attempted to comply with Rule 4. *Id*. Petitioner's filing of his First Amended Complaint under Rule 5 would have been proper had Petitioner complied with service of the initial complaint under Rule 4.

Petitioner's reliance on Rule 5 is a misapplication of the rule. Rule 5 governs the filing of subsequent pleadings and other papers in a civil action. FED. R. CIV. P. 5. Rule 5 does not and is not meant to circumvent the requirement of personal service under Rule 4. Any assertion to the contrary is not supported by law.

B. It was not an abuse of discretion by the lower court to dismiss the action based upon Petitioner's failure to properly serve the parties under Rule 4.

Petitioner argues that the lower courts were biased when they did not accept his argument that his subsequent filing of the First Amended Complaint under Rule 5 should excuse his failure for not personally serving Respondent in the initial complaint. Petitioner's brief at v. Petitioner's reasoning stems from Respondent's counsel making a general appearance in the initial complaint to contest the insufficiency of service. Petitioner's brief at 10a. The record is clear that there was no waiver of service by Respondent's counsel. Pet. App. at 7a. Respondent counsel filed a general appearance to contest the insufficient service of process. Pet. App. at 6a. When Petitioner filed his subsequent pleading, the First Amended Complaint, personal service on the Respondent still had not been perfected. Resp. App. 44-45. Respondent's counsel then filed their Motions to Dismiss the Petitioner's First Amended Complaint, again they did not waive service and reasserted insufficiency of service. *Id*. Neither the District Court nor the 11th Circuit could overlook the insufficiency of service under Rule 4. Therefore, Petitioner's assertion that the lower courts did not acknowledge his adherence to Rule 5 is misplaced. Simply put, the lower courts could not get to Rule 5 because Petitioner failed to properly follow Rule 4.

C. The District Court did not abuse its discretion when finding that Petitioner failed to give proper notice under Rule 4.

The District Court properly followed the law as to the application of Rule 4 in the commencement of civil actions. Under Rule 4 an individual must be served either:

> (1) "following state law…in the state where the district court is located or where service is made" or doing one of the following: (A) "delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process FED. R. CIV. P. 4

The District Court discussed Petitioner's failure to properly serve Respondent in this civil action. Respondent properly asserted that there was insufficient service of process because the Respondent were served by mail. Resp. App. 54-55. The District Court in review of previous Eleventh Circuit decisions concerning service of process noted that:

> Service of Process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when the defendant has not been served. Thus, the Court begins its inquiry here, as the Court cannot reach the

> merits of the plaintiff's claims against improperly served defendant unless and until those defendants are properly served or service of process is waived.

Resp. App. 54. *See also*, FED. R. CIV. P. 4.; *Pardazi v. Med. Ctr*. 896 F.2d 1313, 1317 (11th Cir. 1990) and *Jackson v. Warden, FCC Coleman-USP*, 259 F.App'x 181, 183 (11th Cir. 2007). In reviewing Rule 4, the District Court further noted that the 11th Circuit held in *Natty v. Morgan*, 615 F.App'x 938,939 (11th Cir. 2015) that Rule 4 requires personal service on an individual absent waiver. *Id*. at 8. In *Natty*, the Eleventh Circuit upheld a dismissal of a *pro se* action on grounds of imperfect service where the plaintiff's only attempt at service was sending by mail a copy of the papers to the defendants. *Natty*, 615 F.App'x at 939. The District Court further reviewed whether Rule 4 service requirement was "following state law for serving a summons in an action brought courts of general jurisdiction in the state where the district court is located." Resp. App. 55. See, FED. R. CIV. P. 4. Under Georgia law, a plaintiff may serve an individual defendant "by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." O.C.G.A § 9-11-4 (e)(7). Thus, the District Court found that both Rule 4 and Georgia law required service of process to be "personal service" – service by hand delivery of the complaint and summons. FED. R. CIV. P. 4; O.C.G.A § 9-11-4; Resp. App. 56-57. Therefore, the District Court's

dismissal of Petitioner's case due to his failure to properly served Respondent under both Rule 4 and Georgia law was not an abuse of discretion and Petitioner application for writ of certiorari must be denied.

D. The Eleventh Circuit did not abuse its discretion when it affirmed the District Court's findings that Petitioner failed to personally serve Respondent under Rule 4 and thus proper notice was not given.

The Eleventh Circuit properly followed the law when it affirmed the District Court's findings that Petitioner failed to personally serve Respondent pursuant to Rule 4. Pet. App. at 7a. The Eleventh Circuit's review of a district court's judgment granting a Rule 12(b)(5) motion to dismiss for insufficient service of process is de novo. Pet. App. at 5a; *See Prewitt Enters., Inc. v Org. of Petroleum Exporting Countries*, 353 F.3d 916, 920 (11th Cir. 2003). The Eleventh Circuit reviews any findings of fact only for clear error. *Id.*

In reviewing the District Court's ruling in this matter, the Eleventh Circuit first noted that, "a plaintiff must properly serve process for the court to have personal jurisdiction over the defendant." Pet. App. at 5a; *See Omni Capital Intern., Ltd. v. Rudolf Wolff & Co.*, Ltd., 484 U.S. 97, 104 (1987). The Eleventh Circuit next reviewed both Rule 4 and Georgia law, noting, that Georgia law allows for service

of process under the same circumstances as Rule 4. Pet. App. at 5a; FED. R. CIV. P. 4; Ga Code Ann. § 9-11-4.

The Eleventh Circuit did review Petitioner's contentions that he properly served Respondent and that Respondent waived proper service of process by not addressing personal jurisdiction in their first answer to his amended complaint. Pet. App. at 6a. Petitioner admits that he attempted to serve Respondent through certified mail only. Pet. App. at 6a. While the Eleventh Circuit noted that there was some disagreement as to whether Petitioner sent the original Complaint via certified mail to the Respondent himself or whether he sent it to Respondent's attorney of record, the Eleventh Circuit rightly held that the distinction made no difference because neither Rule 4 nor Georgia law authorize service of process through the mail. Pet. App. at 6a. The Eleventh Circuit cited further relevant case law from other circuits holding service by certified mail is not proper service under Rule 4. Pet. App. at 6a. In support, the Eleventh Circuit cited to *Yates v. Baldwin,* 633 F. 3d 669, 672 (8th Cir. 2011)(holding that mail does not satisfy delivery under Rule 4); *Peters v. United States*, 9 F.3d 344, 345 (5th Cir. 1993) (holding that certified mail does not satisfy "delivery" under Rule 4); *Green v. Humphrey Elevator & Truck Co.*, 816 F.2d 877, 882 (3d Cir. 1987) (holding mailing alone does not satisfy delivery under Rule 4(j)). Pet. App. at 6a. In addition, the Eleventh Circuit cited to Georgia case law to a holding in *Camp v. Coweta County*, where the court held that Georgia state law requires in-person service. Pet. App. at 7a. *Camp v. Coweta County*, 625 S.E.2d 759, 761 (2006).

Lastly, the Eleventh Circuit found that Respondent had not waived service of process. Pet. App. 7a. The Eleventh Circuit reasoned that although objections to service of process can be waived if not addressed in the first responsive motion to the complaint. Pet. App. at 7a. Respondent had objected to service of process in both his original Motion to Dismiss and his Motion to Dismiss Petitioner's First Amended Complaint. Pet. App. at 7a. Both were Respondent's first response to each of Petitioner's complaints. Pet. App. at 7a. Therefore, there was no waiver of service. *Id.* The Eleventh Circuit in reviewing the procedural facts of this case, rightly followed the law. Petitioner failed to properly effectuate service on Respondent. Thus, the 11th Circuit did not abuse its discretion by affirming the dismissal of Petitioner's claim.

III. THE DISTRICT COURT AND ELEVENTH CIRCUIT DUTIFULLY CONSIDERED PETITIONER'S AMENDED COMPLAINT.

In Questions (D)(1) – (2), Petitioner asserts that the lower courts "abused their discretion by not considering the Petitioner's content" and not applying a less stringent standard to Petitioner. Pet. at vii. As addressed above, the lower courts lacked jurisdiction to address the merits of Petitioner's claim. *Supra* at Sec. 1(B). However, both lower courts thoroughly considered Petitioner's jurisdictional arguments.

In its Order, the District Court specifically addressed Petitioner's arguments regarding service of process and/or lack thereof under both federal and state law. Resp. App. at Doc. 48-66. Similarly, the Eleventh Circuit analyzed Petitioner's arguments

concerning service of process under both federal and state law. Pet. App. at 4a – 7a. Both courts found that neither federal nor state law authorized service via certified mail. *Id*. at 7a.

Furthermore, with respect to Petitioner's *pro se* status, in its Order, the District Court considered the Eleventh Circuit's decision in *Natty v. Morgan*, 615 F.App'x 938 (11th Cir. 2015) when determining whether Petitioner's *pro se* status absolved him of complying with FED. R. CIV. P. 4(e). Resp. App. 55-56. Consistent with the Eleventh Circuit's previous holdings, the District Court answered this inquiry in the negative. This holding is also consistent with this Court's previous holding in *McNeil v. U.S.*, 508 U.S. 106 (1993). In *McNeil*, this Court held that "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil*, 508 U.S. at 113. Thus, this Court has previously held that a petitioner's *pro se* status does not absolve them of adhering to the procedural rules. *Id*. Accordingly, Petitioner's Petition should be denied as his *pro se* status does not excuse his failure to serve Respondent Dumas pursuant to FED. R. CIV. P. 4.

Petitioner's *pro se* status has been considered and given the requisite deference. However, his *pro se* status does not excuse Petitioner from adhering to the Federal Rules of Civil Procedure. Thus, Petitioner's failure to serve Respondent Dumas in conformance with FED. R. CIV. P. 4, and not his *pro se* status, led to the dismissal of his Amended Complaint.

IV. THE DISTRICT COURT AND ELEVENTH CIRCUIT CONSIDERED ALL RELEVANT CASE AND STATUTORY LAW

In questions (D) (3) and (D) (4), Petitioner asserts that the lower court only considered the cases favorable to the Respondent and questioned whether the Federal Courts have the authority to determine whether a party has violated another party's Constitutional Rights. Petitioner's brief at viii.

The District Court and Eleventh Circuit rightly considered all relevant statutory and case law and correctly applied it. Both the District Court and the Eleventh Circuit reviewed the law as it pertained to issues raised. The threshold issue was service of process. Pet. App. at 4a – 7a. Petitioner failed to properly serve Respondent. *Id*. at 7a. Petitioner never complied with Rule 4 by personally serving Respondent. *Id*. Petitioner's subsequent filing of the first amended complaint was insufficient since there was insufficient service with initial complaint and there was no waiver of service. Both the District Court and the Eleventh Circuit gave extensive analysis of this issue under both Federal and State law. Pet. App. at 4a – 7a. The District Court held and the Eleventh Circuit affirmed that Petitioner failed to properly serve Respondent under Rule 4. *Id.* The courts could not go beyond established statutory and case law to find in Petitioner's favor. Petitioner simply did meet the threshold procedural requirement of personal serving the Respondent in this case.

Lastly, the Federal Courts can determine whether a person has violated the Constitutional Rights of

another person. The written acknowledge of such is the holding of the court. However, the case must be properly brought before the court. A citizen is entitled to due process of law under the Constitutions of both the United States and their respective State. Such due process requires that a citizen be given service of process with notice of such a complaint made against them. Service of Process under Rule 4 requires that the citizen be personally served with such notice. FED. R. CIV. P. 4. After proper service has been effectuated, the citizen may then file responsive pleading. FED. R. CIV. P. 7; FED. R. CIV. P. 12. Once properly served under Rule 4, plaintiff can amend their pleading and serve defendant under Rule 5. FED. R. CIV. P. 5. Petitioner in this case, failed to properly serve the Respondent under Rule 4. Thus, the courts did not have proper jurisdiction to hear the case because of Petitioner's failure to properly serve the Respondent. Resp. App. 56-57. Upon the proper filing of the Motion to Dismiss, the District Courts rightly dismissed and the 11th Circuit rightly affirmed Petitioner's case. *Id*. Petitioner's writ of certiorari must be denied as there is no case or controversy that this court should consider in this matter.

CONCLUSION

For the foregoing reasons, neither the District Court nor the Eleventh Circuit erred in granting Respondent Dumas' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5), for insufficient service of process. Petitioner failed to properly serve Respondent Dumas and this defect cannot be cured through actual knowledge. Furthermore, the District Court properly

denied Petitioner's Motion for Reconsideration due to his failure to introduce any new facts or law to support his Motion. Accordingly, Respondent Dumas is entitled to dismissal of Petitioner's claims in their entirety and his Petition for Writ of Certiorari must be denied.

Respectfully submitted,

REGINALD C. MARTIN
Senior Assistant City Attorney
Counsel of Record

STACI J. MILLER
Assistant City Attorney

City of Atlanta Law Department
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303
(404) 546-4100
remartin@atlantaga.gov
sjmiller@atlantaga.gov

Counsel for Respondent
Dexter Dumas

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Civil Action File
No. 1:18-CV-3817

[Filed September 19, 2018]

DAVID THORPE, an individual,	)
	)
Plaintiff,	)
	)
v.	)
	)
DEXTER DUMAS, an individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,	)
	)
Defendants.	)
	)

FIRST AMENDED COMPLAINT

COMES NOW David Thorpe, the plaintiff in the above captioned matter and pursuant to Federal Rule of Civil Procedure 15-1 (b), respectfully files this the first amended complaint. The plaintiff seeks to amend

the original complaint to assist and clarify the statement of claims for the Defendants' counsel. (a) Please note the removal of FCDA an entity from the complaint (b) please note the amendment in the claims (counts) section (c) small grammatical corrections throughout.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Civil Action File
No. 1:18-CV-3817

[Filed September 19, 2018]

DAVID THORPE, an individual,	)
	)
Plaintiff,	)
	)
v.	)
	)
DEXTER DUMAS, an individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,	)
	)
Defendants.	)

FIRST AMENDED COMPLAINT

COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND

Plaintiff, DAVID THORPE, (hereinafter referred to as "Thorpe"), individually, and via *pro se* submission, brings this Complaint for Damages and Jury Trial Demand against Defendants DEXTER DUMAS (hereinafter referred to as "Detective Dumas"), GEORGE JENKINS (hereinafter referred to as "ADA

Jenkins"), LAUREN BOONE (hereinafter referred to as "ADA Boone"), JEFFREY S. CONNELLY (hereinafter referred to as "ADA Connelly"), FANI WILLIS (hereinafter referred to as "Deputy Willis"), FULTON COUNTY DISTRICT ATTORNEY'S OFFICE (hereinafter referred to as "FCDA") and URAL GLANVILLE (hereinafter referred to as "Glanville") (collectively referred to as "Defendants"), and in support of his claims, states the following:

NATURE OF COMPLAINT

What occurred here is a complete failure of the American Justice system, courtesy of the official's entrusted to uphold it. Beginning with, the dishonest police investigator, to the poor advice from two sitting judges (on record), and every attorney in-between (in Thorpe's opinion essentially three Judas types for the defense and four status seekers for the state.)

Things just don't happen, people make choices and the choices that were made by said officials pertaining to my arrest, detainment, and twenty-seven months futile prosecution were void of ... honor, virtue, rectitude, impartiality, objectivity, and righteousness.

The problem lies with comfort, simply put, these officials are so accustomed to our broken justice system and how easy it makes everyone's job (via the plea). Their weak human nature's, unfortunately, allows them to forget their oaths along with fundamental fairness. Defendants become mere numbers thrown into a system that has forgotten to seek justice yet opt to do away with alleged criminology quickly and efficiently ... WOW!

Too many times our courts forget that justice is the primary goal! Therefore, pertaining to my ordeal, then American Justice (itself) must be certainly in question. When the abuse of authority coupled with fundamentally unfair treatment of, yet another Black Male (by all court officials) can be allowed to slip through any legal technicality or grimy loop hole.

Thorpe's claims in this action are a direct and proximate result of defendants' negligent, willful, and wrongful conduct in connection with Thorpe's unlawful 2014 arrest, detainment, and the subsequent deficient prosecution.

Thorpe's nightmare began in July of 2014, and he continues to suffer from the anguish of defendants' wrongful actions and failures of duty. Thorpe was unlawfully arrested and subsequently detained based on, misrepresentations and omissions from a sworn police officer. Adding insult to injury, the FCDA and its team of professionals "bound by oaths to seek justice for all" then stepped outside the bounds of decency by disregarding their oaths. Thorpe's prosecution lacked impartiality and the charges against him were clearly never investigated to the full extent (the laws of Georgia article 3(c)).

As a result of Defendants' malicious wrongful actions and failure to act within the state of Georgia and the Constitutional guidelines. Thorpe lost his full freedom for 21 days and was subsequently deprived of liberty and possessions (via an ankle monitor), for an additional 586 days.

As the claims herein arise from violations of Thorpe's civil rights granted to each and every American citizen, Thorpe brings forth claims under 42 U.S. Code § 1983. Additionally, Thorpe brings forth claims for Violation of Due Process and Intentional Infliction of Emotional Distress.

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction over this action under 28 U.S. Code § 1331, the claims herein arise under the Constitution, laws, or treaties of the United States.

2. The proper venue in the United States District Court for the Northern District of Georgia, under 28 U.S. Code §1391(b) (2), which states that the venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated."

3. Since the claims herein present a federal question. A substantial part of the events giving rise to Thorpe's claims occurred in this judicial district. Jurisdiction and venue are properly established before this court.

PARTIES

4. Plaintiff Thorpe is *sui juris* before this court, a natural person over the age of 18, and a citizen residing in this district.

5. Defendant Detective Dumas is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in this district. At all material times herein, Detective Dumas, was a police officer within the Atlanta Police Department under Badge #3870.

6. Defendant ADA Jenkins is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in this district. At all material times herein, ADA Jenkins, was an Assistant District Attorney, an officer of the court, within the Fulton County District Attorney's Office.

7. Defendant ADA Boone is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in this district. At all material times herein, ADA Boone, was an Assistant District Attorney, an officer of the court, within the Fulton County District Attorney's Office.

8. Defendant ADA Connelly is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in this district. At all material times herein, ADA Connelly, was an Assistant District Attorney, an officer of the court, within the Fulton County District Attorney's Office.

9. Defendant Deputy Willis is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in

this district. At all material times herein, Deputy Willis, was a Deputy District Attorney, an officer of the court, within the Fulton County District Attorney's Office with (upon information and belief) supervisory powers over ADA Jenkins, ADA Boone, and ADA Connelly.

10. Defendant Glanville is *sui juris* before this court, a natural person over the age of 18, and upon information and belief, a citizen residing in this district. At all material times herein, Glanville, was a judicial officer of the court within Fulton County.

RELEVANT FACTUAL ALLEGATIONS

12. On or about July 17, 2014, the Atlanta Police Department received a handwritten complaint filed by the alleged victim, Brett Tittle.

13. Atlanta Police Department failed to exercise decency by granting Thorpe his de facto privilege to an impartial investigation. Thorpe, upon hearing of a possible criminal investigation, contacted and left detailed messages on eight different occasions. While, Willie Thorpe (his father) made two additional attempts ... to NO avail. The Atlanta Police Department failed to follow their own protocol by not returning any calls. (*See attempted contacts, no call back "Exhibit A"*). Note: Without contacting Thorpe, Detective Dumas sought an arrest warrant for the capital felony of armed robbery plus battery, empathizing that it was substantial.

14. In an abhorrent oath breaching effort to secure the unconstitutional arrest of Thorpe, Detective Dumas, with full knowledge of the handwritten complaint of the alleged victim - fueled with gross confidence in the weak nature of American Justice towards individuals of a particular demographic, purposely omitted and staged material facts. Electing to paraphrase a clearly falsified "police narrative" while deceitfully and recklessly excluding all the probability reducing elements of the alleged victims handwritten complaint (???) Grimy. You the reader, must ask yourself - in what fundamentally "fair" investigation, does a seasoned investigator allow a police narrative generated two weeks after an alleged event, to supersede an alleged victims hand written complaint written hours after an alleged event??? The answer is disturbingly simple "mischaracterization": "THE ALLEGED VICTIMS ACCOUNT LACKS THE BELIEVABILITY, LET ALONE CREDIBILITY TO EFFECTUATE AN ARREST FOR SUCH A SERIOUS CRIME (BEAR IN MIND, THERE WAS NO PHYISCAL EVIDENCE OR WITNESSES.)" Dumas and the Atlanta Police Department cannot get their stories straight as to the whereabouts of Tittles hand written complaint. (*See email threads "Exhibit B*")

15. In an abhorrent oath breeching effort to secure the unconstitutional arrest and detainment of Thorpe for a Capital Felony, Dumas, the fallen servant knowingly provided the Fulton County Magistrate Court and the FCDA's with a

falsified affidavit to obtain an arrest warrant and to secure an indictment. Yet another Government Machiavellian stating, "to the best of their knowledge" then commencing to omit, lie, and stage events (perjured) to secure favors from other government officials with success. (*See the corrupted affidavits "Exhibit C"*

16. The alleged victims hand written complaint was withheld from the FCDA'S office and the grand jury. Dumas fully knew that the probability of the alleged events would come under instant scrutiny and fail to accommodate any reasonable, justice seeking persons earnest threshold for probable cause existing. A true and accurate copy of Tittles complaint was obtained by ADA Connelly in March of 2016 and is in the states possession.

17. Thorpe was arrested for armed robbery and battery on August 2, 2014 (with no bond set). Thorpe made his first appearance on August 4, 2014 and because of the capital felony charge, Thorpe was denied bail and informed that any bond issues had to be heard by a higher court. Thorpe without being heard "once" (an outright underhanded undermine of substantive due process) was indicted for armed robbery, aggravated assault, and battery a mere 5 days after, said appearance. (Without any investigation from the ADA's office.) The charges brought against Thorpe on behalf of the FCDA'S Office, illustrates prosecutorial impropriety at its pitiful norm. It is imperative that you should

note, Thorpe a 47-year-old black male had No previous theft, weapons charges, or arrests. In fact, the FCDA'S office, only possessed a police narrative of an alleged incident, and a very brief statement from the alleged victim. No witness's nor creditable evidence (undermining the true definition of probable cause). How can someone be indicted, for a capital felony, so quickly under these circumstances? Thorpe calls it… Prosecutorial bullying!

18. Adding insult to injury the state essentially pretended to assign Thorpe an attorney at his first appearance. Note, Thorpe never engaged let alone met with said attorney Reona F. Bray. Thorpe's first contact with what he thought was his defense lawyer occurred while incarcerated on or around 8/11/2014. Attorney Tamika Hrobowski-Houston represented herself as Thorpe's attorney on her visit stressing the serious nature of the indictment and expressing how expensive it could be if it went to trial. Completely insulting Thorpe by mentioning the term plea. Subsequently, Hrobowski-Houston would remove herself from the case and bill Thorpe for attorney services. Thorpe found out much later that this young lady never even announced her entry despite being prompted to by the case manager Edward Chamberlin. Thorpe is scratching his head! Thorpe states what self-respecting attorney would believe or feel they have any leverage against or with the states attorney without announcing their entry as the defense attorney of the accused???

19. It is imperative to note that pertaining to the unconstitutional prosecution of Thorpe, the FCDA office had knowledge and were in possession of evidence that refuted their fundamentally unfair charges. With the ill deeds of the Atlanta Police Department considered, the lack of true probable cause (all creditable evidence considered) was the same on September 10, 2014 (30 days after the indictment) ...as on October 20, 2016 (dismissal of all indicted charges). Why couldn't these Ministers of Justice simply have done the morally correct deed from the start, instead of causing irreparable suffering to a law-abiding citizen and his family?

20. Beginning with ADA Jenkins, on or about August 18, 2014, Thorpe, through his Attorney Jeffrey Slitz requested Brady material from ADA Jenkins.

21. ADA Jenkins chose not to address the requested Brady material. (per the norm)

22. In fact, ADA Jenkins, with full knowledge that he lacked the credible evidence necessary to secure a conviction against Thorpe, elected to proceed with the unwarranted prosecution of Thorpe.

23. ADA Jenkins willfully failed to arrange a meeting with Thorpe or his attorney in an effort to amicably resolve the pending criminal charges. (per the norm)

24. At no time did ADA Jenkins, make a reasonable attempt to adequately and reasonably investigate the truth. Instead, ADA Jenkins, pompously and clearly was following a standard operating procedure, actively prosecuted a case relying on defendant's fear knowing fully that proving guilt before a jury would be impossible. But, a plea (rooted in fear) very likely.

25. On or about September 10, 2014, ADA Jenkins came into the knowledge of exculpatory evidence which refuted the probability of the armed robbery which Thorpe was being prosecuted for, had occurred.

26. On or about September 10, 2014, ADA Jenkins came into the knowledge of exculpatory evidence which refuted the probability of the aggravated assault Thorpe was being prosecuted for, had occurred.

27. On or about September 10, 2014, ADA Jenkins came into the knowledge of exculpatory evidence which refuted the probability of battery Thorpe was being prosecuted for was of a criminal nature.

28. On or about January 15, 2015 (nearly five months after Thorpe's indictment), ADA Jenkins was forced to meet with Thorpe's attorney via a court schedule conference ...per Thorpe's Attorney, the conference lasted about one minute. ADA Jenkins ridiculous and careless position was, and I quote - "Your guy stabbed my guy, robbed him, and the state was ready for

trial!" The sad and irresponsible problems with that statement was contained in the states discovery package that contained a complete medical report from Grady Hospital??? Absolutely No mention of any injury caused by a weapon of any kind as a clear contradiction of the alleged event per the alleged victim. (unbelievable this ADA didn't even read his own discovery package.) Dumas was the first ADA that failed to act in regard to investigating the charges to the full extent.

29. Thorpe innocently, yet unaware of how the system works, hand delivered a letter to the Judge's Chambers and the ADA's office on March 5, 2015. Pleading with the court and the prosecution that he was a victim of a false report of a crime. Requesting them to allow him to separate from his attorney and submit (or resubmit) all the evidence to prove it (*Thorpe's attorney entered said letter into the courts record see "Exhibit D")*

30. Thorpe clearly disgusted with yet another defense attorney flapping his jaws about the expense of a trial and yet again enters the notion of the benefits of a plea. "Are you kidding me?" Adding insult to injury, Slitz never filed a motion requesting a speedy trial with full knowledge that it was within Thorpe's Constitutional Rights something Thorpe and his father requested from the onset. As Thorpe looks back now it is clear to him that his defense attorneys thought that they could convince him

to consider a plea. Never intending or preparing for a trial! Thorpe askes you the reader "Is this what American Justice has come to?"

31. Thorpe, gaining some knowledge of this justice system filed his own discovery responses (*See "Exhibits E"*) in April 2015 (and subsequently more in June of 2015) insuring and documenting that the courts had his exculpatory evidence. Thorpe still being forced to wear an ankle monitor and report for supervision (weekly) **at his own expense** actually thought and believed that once the government for sure understood the circumstance, his traumatic ordeal would end (wishful, but silly). The filling of these letters and motions provided the government the opportunity to do the honorable thing under the circumstances but No!! The government failed Thorpe and his family with arrogance.

32. At some point in and around April of 2015 for reasons unknown to Thorpe, Jenkins took a back seat in the prosecution and ADA Boone took over. Early that summer at yet another so-called trial date, Thorpe had to persuade his attorney to address a motion Thorpe had filed. Pleading with him to argue that eleven months of wearing an ankle monitor was mentally cruel and excessive for the nature of this case and how it was impacting Thorpe's life. The defendant states that on that occasion his attorney Melvin Dansby and ADA Boone approached the bench for a private meeting please note literally in under 12 seconds, Thorpe's attorney headed

back and stated that the judge refused to hear it, Dansby gave no reasonable nor responsible explanation. Dansby stated that he would bring the matter up at a later date. The defendant feels, that you the reader should understand that his attorney just allowed a Superior Court Judge to violate client's procedural due process of a hearing.

33. In spite of possessing exculpatory evidence, ADA Boone failed to seek justice by failing to initiate the dismissal of any charges against Thorpe.

34. Clearly Boone had to know this unfounded, unconstitutional prosecution and her failure to investigate the charges to the full extent would cause emotional, physical, and financial distress upon Thorpe.

35. ADA Boone's actions were calculated and Boone's failure to act in regard to investigating the charges to the full extent. Leaving only one purpose in mind: to break the defendants will to fight. Essentially trying to 'force his hand' at accepting a plea bargain. The FCDA's office have a demonstrated history of breaking accused defendant's spirits in a knowingly calculated scheme in order to secure plea agreements. (95% or perhaps higher.)

36. With no upright chance of prevailing in this prosecution, on or about August 5, 2015, ADA Boone still recommended that Thorpe plead guilty to the charges, serve 10 years in prison, followed by 5 years of probationary supervision.

Said recommendation was declined by Thorpe.

37. Throughout her tenure, ADA Boone e-mailed Thorpe utilizing his personal e-mail address, in which she questioned alleged events surrounding the alleged incident. Thorpe was represented by counsel at the time, Attorney Melvin Dansby, who did nothing to address this ethical violation on the part of ADA Boone. (*A copy of said e-mails are attached "Exhibit F.")*

38. As the unwarranted prosecution of Thorpe continued, the FCDA's office assigned ADA Connelly to Thorpe's case.

39. Either late February or early March of 2016, enters ADA Connelly, "the closer" took over the wheels of injustice against Thorpe.

40. ADA Connelly, much like his predecessors, was in possession of exculpatory evidence, including a confession from the alleged victim that the armed robbery "did not happen." ADA Connelly's failure to act in regard to investigating the charges to the full extent solidifies ADA Connelly as the third District Attorney the laws of Georgia Article 3 (c) and Article 4 (b) (d) for this, a noncomplex case. (Person A alleged person B committed an act against them no witness, no evidence yet exculpatory evidence to refute.)

41. At the March 25, 2016 hearing, Thorpe inquired of his counsel and the court as to why there was

no follow-up on the motion filed requesting the removal of Thorpe's ankle monitor.

42. Glanville also inquired of Thorpe's counsel, Melvin Dansby, as to why no motion had been filed to have Thorpe's ankle monitor removed. When prompted, Thorpe's clearly unseasoned attorney, Melvin Dansby, dropped the bomb "on record" as to why stating "the judge had refused to hear or modify the bond condition". Yet again another court official violating procedural due process. (*See attached "Exhibit G.")*

43. Glanville had approximately nine months of opportunity prior to the March 25, 2016 hearing to address Thorpe's ankle monitor but failed to adequately address the issue in open court.

44. Additionally, Glanville failed to address Thorpe's request for a bond modification in a reasonable timeframe. (Thorpe originally filed the motion on April 10, 2015.)

45. Thorpe was unduly and unjustly placed under an excessive bond and was not afforded proper due process in having his requests for a bond modification heard by Glanville.

46. ADA Connelly led the charge against Thorpe in arguing for a denial of Thorpe's request for a bond modification. In fact, ADA Connelly brought forth Thorpe's previous non-convicted arrest allegations in an effort to bolster his argument for denial. (*See transcript "Exhibit H")*

47. ADA Connelly's actions in asking the court to reject Thorpe's request to remove the ankle monitor was knowingly done for the purpose of continuing to deprive Thorpe of his full liberty.

48. ADA Connelly's actions were wholly unreasonable as demonstrated by the exculpatory evidence and based on the fact that Thorpe had obeyed and met all of the release requirements. (For 19 months)

49. On or about April 4, 2016, without Thorpe's knowledge, ADA Connelly requested and entered Thorpe's case into "dead docket" status. Thorpe adamantly believed that his attorney, Melvin Dansby, knew and withheld this information from him yet Dansby claimed he knew nothing of the dead docket order in fact he told the Georgia Bar that the state prosecutor perhaps was engaging in prosecutorial misconduct. None the less Dansby did nothing to correct or address the underhanded backdoored "dead docket".

50. Thorpe filed (as a *pro se* litigant) a Motion to Reinstate the Case and Remove from dead docket, because his attorney would not. Despite the fact that Judge Glanville did sign that original questionable order, he had to grant the removal of the dead docket and reinstate the case. That order was signed on August 2, 2016.

51. Shortly after Judge Glanville recused himself from the case, Thorpe was given the right to represent himself by Judge John Goger on

September 5, 2016. Eight hundred and eleven days (811) into this disgraceful ordeal, the state of Georgia, faced with realization that their standard operating procedures were not going to work ***with this black man***. They disposed of the case *noelle pro sequi.* (October 20, 2016)

52. Deputy Willis, at all time's material, oversaw the actions of ADA Jenkins, ADA Boone, and ADA Connelly. Willis's duties were not prosecutorial but certainly none the less administrative and supervisory. It was Willis whom assigned four different ADA's for this non-complex case. (That can not be normal.) Since three of the ADA's all failed to act in regard to investigating, that in its self is a training issue. Willis the supervisor is directly responsible for said issue.

53. Deputy Willis knew the facts and circumstances of Thorpe's case. Please see *("exhibit 10" is an email from ADA Boone informing the defense that her supervisor none other than Deputy Fani Willis wanted to meet with counsel.)*

54. Deputy Willis at one point even told Thorpe's previous attorney that Thorpe "should take something." Deputy Willis was obviously indicating that Thorpe should take a plea bargain. Please see (*"exhibit 10 a" is an audio tape of Thorpe's attorney speaking in regard to an offer the state has made the day before a special trial. This illustrates the prosecutions pitiful attempt to have an innocent man take a meager plea – key work innocent.)*

55. Pertaining to this case, (perhaps many many more) Deputy Willis along with the FCDA failed to act as ministers of justice. (not even close)

56. The record shows four district attorneys, but Thorpe would be remiss not to mention another deputy district attorney that displayed a tactical and pitiful method to snare Thorpe into the state's web of spirit breaking. As if it was not enough, Thorpe was forbidden to visit his ailing father out of state, while his dad still displayed some signs of enjoyment of life (Due to bond conditions.) In mid-February of 2015, Deputy Ron Dixon who knew or should have known the exact nature and status of Thorpe's criminal case, returned Judy Thorpe's (Thorpe's sister) call and stated "The FCDA's office was not going to be able to be involved with assisting (perhaps permitting Thorpe to see his gravely ill father ...showing no compassion, referred to a man given days to live "sick or something". *(Really Dixon) (See "Exhibit I" audio CD and physician document)*

57. **The inability to be humane or even decent, in this type of situation in the midst of a futile miscalculated prosecution is a disgrace at the hands of the <u>FULTON COUNTY DISTRICT ATTONEYS OFFICE!!!</u>**

58. **Absolutely yes,** the termination of their pursuit of criminal charges against Thorpe was made because the charges cannot be proven due to the evidence being too weak for the FCDA's office to carry its requisite burden of proof

(which Defendants knew all along), because the evidence was fatally flawed in light of the claims brought, and because ADA Jenkins, ADA Boone, ADA Connelly, Deputy Willis, and the FCDA's office became doubtful that Thorpe was guilty because Thorpe's innocence was proven as a matter of fact.

59. Defendants acted in concert in a calculated and sentinel scheme to deprive Thorpe of his civil rights. Further, Defendants' actions herein were wrongful and malicious and clearly fall outside the bounds of decency in any civilized society. With exculpatory evidence in hand and knowing that Thorpe was not guilty of the charges brought against him, Defendants continued to humiliate, intimidate, and elected not to investigate nor drop the unwarranted charges. To add insult to injury the Georgia Bar (the general counsel) shamefully refused to discipline the seven lawyers mentioned in this complaint.

60. As a direct and proximate result of Defendants' actions or failure to act, Thorpe has been emotionally, physically, and financially damaged.

CLAIMS

COUNT ONE – VIOLATION OF 42 U.S. CODE §1983

61. Thorpe incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

62. Defendants' willful and wrongful actions and failures to act deprived Thorpe of his constitutional right to liberty, property, and adversely affected Thorpe's God given right to the pursuit of happiness.

63. Thorpe was unconstitutionally arrested, charged, detained, and placed under supervision for a period of 586 days. Clearly an unreasonable seizure. During this time, Thorpe was deprived of the freedoms promised to every United States Citizen.

64. Thorpe states that "he would not wish the emotional distress, depression, fear, anxiety, and guilt that he suffered not even on Thorpe's stated Defendants'.

65. An officer of the law that willingly and knowingly misrepresent or omits information given by an alleged victim to secure an arrest and or detention is corrupt, and his actions are cognizable claims under § 1983. See the United States Constitution Amendment IV.

66. Defendants knew, or should have known, that there was no evidence to indicate that Thorpe was truly guilty of the crimes charged. In spite of said knowledge, Thorpe was arrested, detained, charged, and subsequently prosecuted for three serious crimes.

67. At all times material, defendants were acting under the color of state law.

68. "In order to state a claim for relief under 42 U.S. Code §1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him "of some right, privilege, or immunity secured by the Constitution or laws of the United States." See *Hale vs. Tallapoosa County,* 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by "a person acting under color of state law." *Id.*

69. Both requisite elements exist here.

70. Defendants' actions and failures to act deprived Thorpe of his right to liberty, and property secured by the United States Constitution. Along with infringing on Thorpe's fundamental rights to procedural due process.

71. Defendants' actions and failures to act were committed by individuals who were acting under the color of state law.

72. As a direct and proximate result of defendants' actions and failures to act, Thorpe's constitutional right to liberty and property was deprived or compromised. Thorpe states even now nearly four years later his God given right to happiness has been debased by the United States government.

73. As a direct and proximate result of defendants' actions and failures to act, Thorpe has been emotionally, physically, and financially damaged.

WHEREFORE, Thorpe, hereby seeks all relief available under the law. To include actual financial losses, compensatory damages, punitive damages, attorney fees, costs pursuing this action, declaratory relief, (a validation and written acknowledgement of all proven violations and misconducts including criminal) trial by jury, and all other relief just and proper on the premises.

COUNT TWO- VIOLATION OF DUE PROCESS – FOURTEENTH AMENDMENT

74. Thorpe hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

75. The due process clause of the fourteenth amendment prohibits the states from depriving "any person of life, liberty, or property, without due process of law."

76. Defendants' willful conduct and failures of duty (mischaracterizing and omitting information to obtain a warrant, continuing a prosecution with the absence of probable cause, and denying an American citizen the right to a fair hearing) deprived Thorpe of his full liberty for a period of 21 days and subsequently compromised his liberty, state of mind, and monetary property for approximately 5 86 days.

77. As a direct and proximate result of Defendants' actions and failures to act, Thorpe has been emotionally, physically, and financially damaged.

WHEREFORE, Thorpe, hereby seeks all relief available under the law. To include actual financial losses, compensatory damages, punitive damages, attorney fees, costs pursuing this action, declaratory relief (a validation and written acknowledgement of all proven violations and misconducts including criminal), trial by jury, and all other relief just and proper on the premises.

COUNT THREE -VIOLATION OF THE FOUTH AMENDMENT

78. Thorpe hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

79. Pertaining to Thorpe's right to be secure in his person against unreasonable seizures Thorpe's arrest and subsequent detention was based on false and misleading statements known to Detective Dumas at all material times and in addition, calculated omissions. Therein is the violation of Thorpe's Fourth Amendment Rights. Before an arrest warrant is issued the Fourth Amendment requires a truthful, factual showing in the affidavit used to show probable cause. The Constitution prohibits an officer from making perjurious or recklessly false statements in support of a warrant. *See Kelly v. Curtis* 21F.3d 1544.

80. Absolutely, Detective Dumas's conduct violated this clearly established right.

81. ADA Boone, ADA Connelly, and ADA Jenkins elected not to investigate to the full extent,

elected to ignore the red flag in their own discoveries, and completely failed to seek justice despite Thorpe's discovery responses. It is these oath breeching elements that contributed to the pretrial depravation of Thorpe's liberty.

82. Deputy Willis in her supervisory and administrative position knew or should have known of said lack of investigations, of said red flags in the state's discovery, and of said discovery responses filed by Thorpe. Deputy Willis's involvement and the continuation of Thorpe's unconstitutional and unfair prosecution was paramount because it was Deputy Willis that assigned four different prosecutors over the course of 811 days to this non-complex case. The records shall show that her supervisory and administrative duties over the prosecutors were evident. With full knowledge Deputy Willis was quite aware of the lack of probable cause producing her malice to the determent and pretrial depravation of Thorpe. Absolute immunity does not apply for *See Imbler v. Pachtman* 424 U.S. 409 1976. The Supreme Court articulated "distinction between absolute immunity for prosecutorial acts and qualified immunity for investigative or administrative acts" ...*See Burns v. Reed* 500 U.S. 478 (1991). The Supreme court states "prosecutors have only qualified immunity for investigative acts..."

83. The Supreme Court states absolute immunity does not apply "when the functions of prosecutors and detectives are the same,

immunity that protects them is also the same." *See* 522 U.S. 118 (1997)

84. Glanville's refusal to hear arguments in regard to a bond modification dealing with the removal of Thorpe's ankle monitor, indeed violated Thorpe's right to procedural due process but also allowed the pretrial depravation of Thorpe's liberty, and excessive bond requirement to continue.

WHEREFORE, Thorpe, hereby seeks all relief available under the law. To include actual financial losses, compensatory damages, punitive damages, attorney fees, costs pursuing this action, declaratory relief (a validation and written acknowledgement of all proven violations and misconducts including criminal), trial by jury, and all other relief just and proper on the premises.

COUNT FOUR- VIOLATION OF THE EIGHTH AMENDMENT
(Defendant Glanville)

85. Thorpe hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

86. The eight amendment of the United States Constitution and Article 1, section 1 paragraph 17 of the Georgia Constitution provides that "excessive bail shall not be required....."

87. Thorpe filed a proper motion to the courts for bond modification to no avail. Thorpe's attorney requested a hearing on a bond modification for

the removal of the ankle monitor to no avail. When Glanville stated "no!!" to a hearing and "I am not modifying that bond!" Glanville stepped outside the bounds of his jurisdiction by violating an American Citizens Right to have his attorney argue to why the bond modification should occur. *See Rankin v. Howard,* (1980) 633 S.2d 844.

88. Thorpe states "even before the date of said violation, Thorpe's bail requirement had become excess." Paying the 10% to the bond company is one thing but having to pay the monthly expense of the monitor in addition to a loss of wages because of reporting to weekly supervision. Not to mention the additional cost of commuting into the city weekly. How the $375-$425 per month for this unnecessary bond requirement caused Thorpe to neglect other financial responsibilities.

89. Judicial immunity does not apply to Glanville. This Defendant using the powers given to him by the state of Georgia, absolutely did violate Thorpe's Constitutional Rights. "The essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in an orderly preceding." *See Fiehe v. R.E. Householder Co.,* 125 SO. 2,7 (SLA 1929). Relief is possible when a person in the position of a judge does knowingly disregard Constitutional and Civil Rights of others, his/her oath of office. Take note *Constitution Supreme Clause Article VI clause 2* of the Constitution (this

Constitution, and the laws of the United States which shall be made pursuant thereof, ... shall be the supreme law of the land: and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.) Absolute immunity is still contrary and absolutely in direct conflict.

90. Glanville failed to provide Thorpe with a timely bond hearing in regard to the removal of Thorpe's ankle monitor, in spite of irrefutable exculpatory evidence presented to the court.

91. Congress enacted § 1983 and its predecessor, §2 of the Civil Rights Act of 1866, 14 Stat. 27, to provide an independent avenue for protection of federal constitutional rights. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." *Mitchum v. Foster,* 407 U. S. 225, 240 (1972). See also *Pierson,* at 558-564 (dissenting opinion) (every Member of Congress who spoke to the issue assumed that judges would be liable under § 1983).

92. As a result of Glanville's refusing to grant Thorpe a hearing regarding bond modification, Thorpe suffered financial losses and emotional distress. Thorpe is tormented with disgust for the unjust self-protecting element of the United States Justice System. Thorpe states "have we

forgotten law should be reasoning free from passion."

WHEREFORE, Thorpe, hereby seeks all relief available under the law, including equitable relief as follows: issue declaratory relief (a validation and written acknowledgement of all proven violations and misconducts) as this court deems appropriate. Issue other relief as this court deems appropriate and fair. Award Thorpe costs of litigation.

COUNT FIVE- MALICIOUS PROSECUTION

93. Thorpe brings forth a malicious prosecution claim (GA Code § 51-7-40) against Detective Dumas, ADA Boone, ADA Connlley, ADA Jenkins, and Deputy Willis. Detective Dumas's lack of probable cause led to mischaracterize the alleged victim's statement. It is that lack of probable cause yet his willingness to still obtain an arrest warrant that brings about malice. Through these actions Thorpe was subsequently arrested, detained, and indicted for serious crimes. Absolutely causing financial loss, mental anguish, and physical scaring.

94. ADA Boone, ADA Connlley, and ADA Jenkins elected to continue the prosecution of Thorpe despite the fact they lacked probable cause to constitutionally pursue the charges. Therein lies ADA Boone, ADA Connlley, and ADA Jenkins malice.

95. ADA Boone, ADA Connelly, and ADA Jenkins elected not to investigate to the full extent, elected to ignore the red flag in their own

discoveries, and completely failed to seek justice despite Thorpe's discovery responses. It is these oath breeching elements that contributed to the pretrial depravation of Thorpe's liberty, financial loss, mental anguish, and physical scaring.

96. Deputy Willis in her supervisory and administrative position knew or should have known of said lack of investigations, of said red flags in the state's discovery, and of said discovery responses filed by Thorpe. Deputy Willis's involvement and the continuation of Thorpe's prosecution was paramount because it was Deputy Willis that assigned four different prosecutors over the course of 811 days to this non-complex case. The records shall show that her supervisory and administrative duties over the prosecutors were evident. With full knowledge Deputy Willis was quite aware of the lack of probable cause producing her malice to the determent and pretrial depravation of Thorpe.

97. Absolutely causing financial loss, mental anguish, and physical scaring.

WHEREFORE, Thorpe, hereby seeks all relief available under the law. To include actual financial losses, compensatory damages, punitive damages, attorney fees, costs pursuing this action, declaratory relief (a validation and written acknowledgement of all proven violations and misconducts including criminal), trial by jury, and all other relief just and proper on the premises.

COUNT SIX- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

98. Thorpe hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

99. In order to succeed on a claim for intentional infliction of emotional distress, a party must show (1) conduct which was intentional or reckless (2) conduct which was extreme and outrageous, (3) causation, and (4) severe emotional injury. *See Bridges vs. Winn-Dixie,* 176 Ga. App. 27, 230, 335 S.E.2d 445 (1985).

100. Further, Georgia courts have noted, "'whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law." *See Cooler vs. Baker,* 204 Ga. App. 787, 788, 420 S.E.2d 649 (1992) (citations omitted). "Recovery is authorized only in those circumstances where "the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *See Yarbrough vs. SAS Systems. Inc.,* 204 Ga. App. 428, 429,419 S.E.2d 507 (1992).

101. Defendants' actions and failures to act, herein clearly go beyond all possible bounds of decency. Detective Dumas knew of the handwritten complaint submitted by the alleged victim which

clearly showed that the alleged crimes Thorpe was charged with were extremely unlikely. This information was not shared with the FCDA's office until after Thorpe had been arrested, charged, and the prosecution had begun (approximately 19 months later).

102. Detective Dumas purposely and knowingly misrepresented and omitted information from an alleged victim's handwritten complaint. "Taken by him a day after the alleged incident and staged an affidavit for the sole purpose of securing an arrest warrant for Thorpe.

103. Detective Dumas knew, or should have known, that his falsified affidavit would be relied upon in criminal court proceedings.

104. Even after the exculpatory evidence had come forth, ADA Jenkins, ADA Boone, ADA Connelly, failed to act in accordance to the oath of office. Furthermore, Deputy Willis clearly lacked the ability to administer the required supervision entrusted in her.

105. Even after the exculpatory evidence had come forth, ADA Jenkins, ADA Boone, ADA Connelly's failures to act led to the continued depravation of Thorpe's liberty, property, and compounded to Thorpe's emotional distress. Deputy Willis clearly lacked the ability to administer the required supervision entrusted in her.

106. Even after the exculpatory evidence had come forth, ADA Jenkins, ADA Boone, ADA

Connelly's, failures to act led to the humiliation and harassment of Thorpe by impressing upon the court Thorpe's guilt and culpability, in spite of clear and convincing evidence to the contrary.

107. Judge Glanville should have been the honorable voice during these proceedings, but he outright failed by clearly succumbing to his subjective views towards Thorpe.

108. Defendants' absolutely acted disgracefully to the detriment of Thorpe.

109. The defendants' careless disregard of the guidelines of the United States Constitution directly affected Thorpe's closest loved ones as well. The timing of Thorpe's arrest and unconstitutional prosecution could not have been worse. During that summer of 2014, his father, Willie Thorpe, had been given 12-18 months to live. Unfortunately, Willie Thorpe, only lived 6 months. Thorpe fully comprehends that the stress of the very serious implications of his indictment compounded his father's health issues. Thorpe was his father's power of attorney for the last few years of his life and he was the executor listed in his will. Thorpe's freedom was paramount to his father because Thorpe was also the power of attorney for his mother, Cora Thorpe and entrusted by his father to handle all business aspects for her. Also, the mother of Thorpe's 10-year-old son, Mia Richardson, was diagnosed with stage 4 ovarian cancer, which eventually spread from her ovaries to her brain, and bones. Thorpe absolutely blames the

additional stress from his legal ordeal to contributing to her rapid decline. Ms. Richardson feared the possibility of her son losing both of his parents. Her death (which she had conceded to) and Thorpe's incarceration. As Ms. Richardson's condition worsened, Thorpe became her caregiver. Thorpe states that "Our time together was constant, and she conveyed her desire for Thorpe to take a plea, which Thorpe could not take a plea. Ms. Richardson feared the system, whereas, Thorpe could not bow to it (this time)!!!" Can you the reader even begin to imagine the kind of stress on the parents? One is surely dying and the other is facing capital felony time for events that did not occur. Thorpe states **"I lived it"** (*See POA and death certificates "Exhibit J.")* The United States Government has arrogantly removed large chunks of joy from this citizen and loved one's lives. (Why???)

110. As a direct result of Defendants' actions and failure to act, Thorpe has suffered severe emotional distress. Thorpe now suffers from anxiety and depression. Thorpe states that "a pilot has been lit deep deep in his soul and mind, in which the flame and its fumes are pure hate towards the corrupt aspects of our justice system!!! Thorpe recalls wanting to cut the ankle monitor off the very next day after placement, but NOOOOO he was chained for 585 more days. Thorpe can't explain the intense desire to remove the parasite (monitor) always. Currently, Thorpe is under the care of medical

professionals and is prescribed mood balancing medication. Thus far, the medication has been successful notwithstanding some physical and mental quirks, also, the long-term effects of the medication are unknown at this time. These conditions were not present prior to July 2014.

111. As a direct result of Defendants' actions and failures to act, Thorpe suffered mental anguish and physical scars. (*See "Exhibit K" medical documents and photos.)*

WHEREFORE, Thorpe, hereby seeks all relief available under the law. To include actual financial losses, compensatory damages, punitive damages, attorney fees, costs pursuing this action, declaratory relief (a validation and written acknowledgement of all proven violations and misconducts including criminal), trial by jury, and all other relief just and proper on the premises.

COUNT SEVEN- FALSE IMPRISONMENT

112. Thorpe hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

113. False arrest or imprisonment is the unlawful detention of the person of another, for any length of time, whereby such is deprived of his/her personal liberty.

114. Detective Dumas did not have probable cause to secure the arrest warrants herein. Detective Dumas had knowledge that a capital felony

initially has no bond, his intent to confine was evident.

115. Detective Dumas knowingly provided the Magistrate Court of Fulton County with a cleverly misrepresented affidavit to secure the arrest of Thorpe. (*See "Exhibit C.")* Detective Dumas failed to submit the alleged victims handwritten complaint to the FCDA's office. (Clearly because it lacked the necessary probable cause.)

116. Thorpe was subsequently detained as a result of Dumas's actions.

117. "...probable cause is present when the surrounding circumstances are sufficient to prompt a reasonably cautious person to conclude that an offense has been committed by the arrestee." *See,* e.g., *Wilson vs. Attaway,* 757 F.2d 1227, 1235 (11th Cir.1985).

118. The surrounding circumstances here would not prompt a reasonably cautious person to conclude that an armed robbery had been committed by Thorpe.

119. As a direct and proximate result of his unconstitutional arrest and false imprisonment, which subsequently led to his post released supervision and depravation of liberty. Thorpe has been emotionally, physically, and financially damaged.

WHEREFORE, because of the senseless and grimy acts committed by this so called civil servant. Detective

Dumas's actions, subjected Thorpe to full loss of freedom for 443 hours beginning with Thorpe's arrest. Thorpe missed his nine-year-old son's first day of school. Having to lie about his whereabouts to his child. Thorpe was left in disbelief, fear, and stressed not understanding why he couldn't post a bail and get back home. Thorpe was handcuffed in front of people that respected him, placed in a concrete holding cell, and required to sit on the floor because of overcrowding. Thorpe was put through being photographed, fingerprinted, and to strip and put on an unclean county jumpsuit. Thorpe was demanded to carry his mattress to his cell. Thorpe was required to occupy a 10x10 space with a complete stranger. Thorpe had to deal with urinating and defecating five feet from said stranger and vice a versa. The understaffing at the jail exposed Thorpe to a 22-hour lockdown per day for 90 % of his incarceration. Thorpe was subjected to eat subpar food which included pork, causing diarrhea and a weight loss of 23 pounds. Thorpe suffered what appeared to be strep throat. Despite filling out proper medical requests, Thorpe was still not seen by medical personnel.

Throughout the entire stay being addressed in an inferior manner by the jail staff. Thorpe hereby seeks the relief of $1,360 per hour for this foul abuse of authority.

DEMAND FOR JURY TRIAL

Thorpe hereby demands a trial by jury on all triable issues.

Dated: 09, 19th 2018.

Respectfully submitted,

/s/David Thorpe
David Thorpe
Pro Se Plaintiff
4902 Fielding Way
Stone Mountain, GA 30088
willcora@msn.com
fax # 1-888-828-0034
phone number 1-404-428-8276

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO.:
1:18-cv-03817-AT

[Filed October 1, 2018]

DAVID THORPE, an individual,

Plaintiff,

vs.

DEXTER DUMAS, an individual; GEORGE JENKINS, an individual; LAUREN BOONE, an individual; JEFFREY S. CONNELLY, an individual; FANI WILLIS, an individual; FULTON COUNTY DISTRICT ATTORNEY'S OFFICE, a governmental entity; and URAL GLANVILLE, an individual,

Defendants.

DEFENDANT DEXTER DUMAS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AND INCORPORATED BRIEF BY SPECIAL APPEARANCE

COMES NOW, Defendant Dexter Dumas (hereinafter "Investigator Dumas") by special appearance and through the undersigned Counsel, and pursuant to Federal Rules of Civil Procedure (FRCP) 12(b)(5) and 12(b)(6), files this Motion to Dismiss Plaintiff's First Amended Complaint and Incorporated Brief by Special Appearance. For the reasons stated within, Investigator Dumas respectfully requests that this Court dismiss Plaintiff's Amended Complaint.

I. STATEMENT OF THE CASE

Plaintiff David Thorpe brings the present action alleging violations of the Eighth and Fourteenth Amendments to the United States Constitution, 42 U.S.C.A. §1983, and that the Defendants falsely imprisoned and intentionally inflicted emotional distress upon him.

II. STATEMENT OF FACTS

Plaintiff alleges in his First Amended Complaint, hereinafter "Amended Complaint", that Investigator Dumas initiated an arrest warrant for Plaintiff in either July or August of 2014. *See* Amended Complaint at 7-8. Plaintiff further alleges that during this time, Investigator Dumas "knowingly provided the Fulton County Magistrate Court and the [Fulton County District Attorney's Office] with a falsified affidavit to obtain an arrest warrant" against Defendant. *Id.* at 8.

However, Plaintiff did not file suit in this matter until August 10, 2018. Doc. 1.

On September 19, 2018, Plaintiff filed his Amended Complaint. Amended Complaint at 1. Plaintiff placed a copy of the Amended Complaint and Summons in the mail addressed to Counsel for Investigator Dumas and the Assistant Attorney General. *Id.* at 37. To date, Plaintiff has failed to personally serve Investigator Dumas with a copy of the Complaint and Summons.

III. ARGUMENT AND CITATION OF AUTHORITY

FRCP 12(b)(5) authorizes this Court to dismiss a complaint for insufficient service of process. Service of process in a federal lawsuit is governed by FRCP 4(c)(1) which "requires a plaintiff to serve each defendant with a copy of ***both*** the summons and the complaint unless the defendant waives service." *Cooley v. Ocwen Loan Servicing, LLC*, 729 Fed. Appx. 677, 682 (11th Cir. 2018). Although this Court is required to "give liberal construction to the pleadings of *pro se* litigants", *pro se* litigants are nevertheless required to conform to procedural rules." *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). Furthermore, "[a] defendant's actual notice is not sufficient to cure defectively executed service." *Id.*

Service of process can be accomplished by:

(a) delivering a copy of the summons and of the complaint to the individual personally;

(b) leaving a copy of each at the individual's dwelling or usual place of abode with

someone of suitable age and discretion who resides there; or

(c) delivering a copy of each to an agent authorized by appointment or by law to receive service of process. FRCP 4(e)(2).

"Neither Rule 4 of the Federal Rules of Civil Procedure nor Georgia law… permit [Plaintiff] to serve the defendant[] directly by mail." *Lawrence v. Bank of America, N.A.*, 700 Fed. Appx. 980, 981 (11th Cir. 2017).

Additionally, FRCP 12(b)(6) authorizes dismissal of an action when the complaint fails to state a claim upon which relief can be granted and no construction of the factual allegations will support the cause of action. Fed. R. Civ. P. 12(b)(6); *Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993). While a court is required to accept as true the complaint's factual assertions, it is not bound to accept as true a legal conclusion couched as a factual allegation. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Although a motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint, a court may "dismiss a complaint on a dispositive issue of law." *Marshall County*, 992 F.2d at 1174.

A. <u>Plaintiff Has Failed to Properly Serve Investigator Dumas.</u>

In the present action, Plaintiff's attempted service is insufficient to satisfy FRCP 4. Rule 4 clearly sets out the proper process for service upon a party and Plaintiff has neither complied with nor attempted to

comply with this Rule. Amended Complaint at 37. Service by mail is not a proper process for serving Investigator Dumas under the Federal or State rules. *See Lawrence v. Bank of America, N.A.*, 700 Fed. Appx. 980, 981 (2017). As a result, Plaintiff's Amended Complaint must be dismissed due to insufficient service of process.

B. Plaintiff's Claims are Barred by the Statute of Limitations

In his Amended Complaint, Plaintiff alleges that Investigator Dumas sought an arrest warrant against Plaintiff and made false or misleading statements to obtain said arrest warrant. Amended Complaint at 7. Plaintiff alleges that these false statements occurred prior to his August 2, 2014 arrest. *Id.* at 8-9. Yet, Plaintiff waited until August 10, 2018 to file his Complaint in the instant action, more than four years after the alleged events giving rise to Plaintiff's Amended Complaint occurred to file his Complaint in the instant action. Doc. 1.

The applicable statute of limitations in the present action is two years. *Owens v. Okure*, 488 U.S. 235, 240 (1989) ("42 U.S.C. §1988 requires courts to borrow and apply to all §1983 claims the one most analogous state statute of limitations"); O.C.G.A. § 9-3-33 ("actions for injuries to the person shall be brought within two years after the right of action accrues"). Thus, taken as true, the allegations contained in Plaintiff's Amended Complaint demonstrate that Plaintiff's claims are barred by the two-year statute of limitations as all allegations against Investigator Dumas occurred prior to August 10, 2016. Accordingly, Plaintiff's Amended

Complaint should be dismissed as to Investigator Dumas.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Amended Complaint must be dismissed in its entirety. Plaintiff has failed to properly serve Investigator Dumas and cannot cure this defect through actual knowledge. Thus, Investigator Dumas' Motion to Dismiss should be granted. In the alternative, Investigator Dumas respectfully requests that this Court grant his Motion to Dismiss on the grounds that Plaintiff has failed to bring the present action within the applicable statute of limitations.

[SIGNATURE ON FOLLOWING PAGE]

This 1st day of October, 2018.

Respectfully Submitted,

Staci J. Miller
VALORRI C. JONES
Senior Assistant City Attorney
Georgia Bar No. 848714
vcjones@atlantaga.gov
(404) 546-4178 *direct*
STACI J. MILLER
Associate City Attorney
Georgia Bar No. 601594
sjmiller@AtlantaGa.Gov
404-546-4083 *direct*

Attorneys for Defendant

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO.
1:18-cv-3817-AT

[Filed November 8, 2018]

DAVID THORPE,	)
	)
Plaintiff,	)
	)
v.	)
	)
DEXTER DUMAS, GEORGE JENKINS, LAUREN BOONE, JEFFREY S. CONNELLY, FANI WILLIS, and URAL GLANVILLE,	)
	)
Defendants.	)
	)

ORDER

This matter is before the Court on the Motions to Dismiss Plaintiff's Amended Complaint of Defendants Dexter Dumas, Judge Ural Glanville, Fani Willis, George Jenkins, Lauren Boone, and Jeffrey S. Connelly [Docs. 16, 19, 22], Plaintiff's Motion for Clerk's Entry of

Default against Defendants Lauren Boone, Dexter Dumas, Jeffrey Connelly, and George Jenkins [Doc. 24], Motion for Leave to File Excess Pages by Ural Glanville and Fani Willis [Doc. 18], Second Motion to Stay Discovery by Ural Glanville and Fani Willis [Doc. 20].

Plaintiff, who is *pro se*, filed a Complaint pursuant to 28 U.S.C. § 1983[1] seeking damages for alleged civil rights violations arising out of his arrest and ensuing prosecution in Fulton County Superior Court. Plaintiff also brings state law claims of malicious prosecution, intentional infliction of emotional distress, and false imprisonment. (Am. Compl., Doc. 12 ¶¶ 93-119.) Plaintiff asserts claims against the presiding judge, Ural Glanville; the supervising prosecutor, Fani Willis; prosecutors, George Jenkins, Lauren Boone, and Jeffrey Connelly; and a police investigator, Dexter Dumas. Because it is unclear to the Court whether Plaintiff is suing these Defendants in their individual and/or official capacities, the Court will construe both

---

[1] Plaintiff's first claim is for a violation of 42.U.S.C. § 1983. However, by its plain terms, Section 1983 does not itself create any substantive rights, but instead provides a method for redress for the deprivation of rights established elsewhere in the Constitution or federal laws. *See Barfield v. Brierton*, 883 F.2d 923, 934 (11th Cir. 1989) ("Section 1983 alone creates no substantive rights; rather it provides a remedy for deprivations of rights established elsewhere in the Constitution or federal laws.") (citing *Baker v. McCollan*, 443 U.S. 137, 144 n. 3, 99 S. Ct. 2689, 2694 n. 3, 61 L. Ed. 2d 433 (1979)). Therefore, the Court construes Counts two through four as constitutional claims pursuant to 42 U.S.C. § 1983.

possibilities for the purposes of ruling on the Motions to Dismiss.[2]

I. Background

Plaintiff alleges the following conduct by Defendants resulted in violations of certain protections guaranteed to him by the Fourth, Eighth, and Fourteenth Amendments to the Federal Constitution, and constitute malicious prosecution, intentional infliction of emotional distress, and false imprisonment under state law:

- After the Atlanta Police Department received a complaint from an alleged victim, Detective Dumas obtained an arrest warrant for Plaintiff Thorpe for the capital felony of armed robbery plus battery. (Am. Compl. ¶¶ 12-13.)
- Plaintiff Thorpe was arrested on August 2, 2014. (*Id.* ¶ 17.) He "made his first appearance on August 4, 2014 and because of the capital felony charge, Thorpe was denied bail and informed that any bond issues had to be heard by a higher court." (*Id.*) On August 9, 2014, Thorpe was indicted for armed robbery, aggravated assault, and battery. (*Id.*)

---

[2] The Court recognizes that Plaintiff is appearing pro se. Thus, his complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

- The Fulton County District Attorney's Office "had knowledge and were in possession of evidence that refuted their fundamentally unfair charges [against Plaintiff Thorpe]." (*Id*. ¶ 19.) Thorpe and his attorney began requesting *Brady* material from Defendant Jenkins in August of 2014. (*Id*. ¶ 20.)

- Defendants Jenkins, Boone, and Connelly failed to investigate his case and prosecuted him without probable cause. (*Id*. ¶¶ 94-95.)

- Defendant Jenkins "chose not to address the requested Brady [sic] material." (*Id*. ¶ 21.) Despite knowing "that he lacked the credible evidence necessary to secure a conviction against Thorpe, [Defendant Jenkins] elected to proceed with the unwarranted prosecution of Thorpe." (*Id*. ¶ 22.) Sometime around September 2014, Defendant Jenkins "came into the knowledge of exculpatory evidence which refuted the probability of the armed robbery[,]" aggravated assault, and battery allegations Thorpe faced. (*Id*. ¶¶ 25-27.)

- All three of the prosecutors assigned to his case continued the prosecution despite having exculpatory evidence in their possession. (*Id*. ¶¶ 25-27, 33-36, 40.)

- As a condition of his bond, Thorpe was required to wear an ankle monitor and report for weekly supervision. (*Id*. ¶¶ 31, 32.) Judge Glanville did not rule on Thorpe's request for a bond modification. (*Id*. ¶¶ 43-45, 84, 87.) The

requirements of wearing an ankle monitor, paying the bond company, and reporting to weekly supervision was excessive. (*Id*. ¶ 88.)

- Judge Glanville recused himself from Mr. Thorpe's case. (*Id*. ¶ 51)
- Deputy Willis, as the supervising attorney in the prosecutor's office is responsible for Defendant Jenkins, Boone, and Connelly's failure to investigate. (*Id*. ¶ 52.)
- The State of Georgia dismissed the charges against Mr. Thorpe on October 20, 2016. (*Id*. at ¶ 51.)
- Finally, "[a]s a direct and proximate result of Defendants' actions or failure to act, Thorpe has been emotionally, physically, and financially damaged." (*Id*. ¶ 60)

II. Standard of Review on Motion to Dismiss

This Court may dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable legal theory. 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1216 (3d ed. 2002); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Generally, notice pleading is all that is required for a valid complaint. *See Lombard's, Inc. v. Prince Mfg., Inc.*, 753 F.2d 974, 975 (11th Cir.1985), *cert. denied*, 474 U.S. 1082 (1986). Under notice pleading, the plaintiff need only give the defendant fair notice of the

plaintiff's claim and the grounds upon which it rests. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)). In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the plaintiff. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003); *see also Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir.1994) (noting that at the pleading stage, the plaintiff "receives the benefit of imagination").

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible" claim for relief. *Twombly*, 550 U.S. at 555-556; Fed. R. Civ. P. 12(b)(6). A complaint may survive a motion to dismiss for failure to state a claim, however, even if it is "improbable" that a plaintiff would be able to prove those facts and even if the possibility of recovery is extremely "remote and unlikely." *Twombly,* 550 U.S. at 556 (citations and quotations omitted). A claim is plausible where the plaintiff alleges factual content that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. at 678. The plausibility standard requires that a plaintiff allege sufficient facts "to raise a reasonable expectation that discovery will reveal evidence" that supports the plaintiff's claim. *Twombly*, 550 U.S. at 556. A Plaintiff is not required to provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions,

and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555.

The Court recognizes that Plaintiff is appearing *pro se*. Thus, the Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1998), *cert. denied*, 493 U.S. 863 (1989). Nor does this leniency require or allow courts "to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action." *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998).

III. Discussion

A. Defendants Dumas, Jenkins, Boone, and Connelly's Motion to Dismiss

Defendants Dumas, Jenkins, Boone, and Connelly seek dismissal of Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(5) for insufficient service of process because Defendants were served by mail.[3]

---

[3] "Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when the defendant has not been served." *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990). Thus, the Court begins its inquiry here, as the Court cannot reach the merits of the plaintiff's claims against improperly served defendants unless and until those defendants are properly served or service of process is waived. *See* Fed. R. Civ.

Plaintiff has failed to properly serve Defendants as required under the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 4(e), an individual must be served either: (1) "following state law . . . in the state where the district court is located or where service is made" or doing one of the following: (A) "delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(1)-(2).

The Eleventh Circuit has held that Rule 4(e) requires personal service on an individual absent waiver. *Natty v. Morgan*, 615 F. App'x 938, 939 (11th Cir. 2015) (finding that service was "insufficient because [the plaintiff] simply mailed papers to the defendants"). In *Natty*, the Court upheld dismissal of a *pro se* action on grounds of imperfect service where the plaintiff's only attempt at service was sending by mail a copy of the papers to the defendants. *Id.*

P. 4(m); *Jackson v. Warden, FCC Coleman-USP*, 259 F. App'x 181, 183 (11th Cir. 2007).

The Court notes that Defendant Dumas also seeks dismissal of Plaintiff's Amended Complaint because Plaintiff's claims are barred by the two-year statute of limitations. Defendants Jenkins, Boone, and Connelly seek dismissal on the following additional grounds: (1) as prosecutors they are entitled to absolute immunity; (2) Plaintiff's claims are barred by the statute of limitations; (3) they have absolute immunity from the state law claims; and (4) Plaintiff has failed to allege facts that establish a claim for malicious prosecution.

The Federal Rules of Civil Procedure permit service "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(e)(1). Thus, the Court must also examine whether Plaintiff complied with Georgia law governing service of process. *See Usatorres v. Marina Mercante Nicaraguenses, S.A.*, 768 F.2d 1285, 1286 n. 1 (11th Cir.1985); Fed. R. Civ. P. 4(e)(1). Under Georgia law, a plaintiff may serve an individual defendant "by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." O.C.G.A. § 9-11-4 (e)(7).

On September 28, 2018, Plaintiff filed a Proof of Service with the Court purporting to show that the Complaint was "served via certified mail" to George Jenkins on August 14, 2018, to Lauren Boone on August 15, 2018, to Jeffrey Connelly on August 15, 2018, Fani Willis on August 14, 2018, Ural Glanville on August 14, 2018, to Atlanta Police Department Headquarters for Dexter Dumas on August 14, 2018, and to Atlanta Police Department Zone 1 for Dexter Dumas on August 21, 2018. (Doc. 17.)

Both Federal and Georgia law on service of process require "personal service" – service by hand delivery of the complaint and summons.[4] For this reason,

---

[4] However, neither Federal Rule 4 nor O.C.G.A. § 9-11-4 permit a party to the action to personally serve process of the complaint and

Plaintiff's attempted service by mail is insufficient under both the Fed. R. Civ. P. 4 and O.C.G.A. § 9-11-4 (e)(7). Accordingly, Defendants Dumas, Jenkins, Boone, and Connelly's Motions to Dismiss (Docs. 17, 22) are **GRANTED** and Plaintiff's claim against those Defendants are **DISMISSED without prejudice**.

B. Motion to Dismiss of Defendants Judge Glanville and Willis [Doc. 19]

Defendants Glanville and Willis seek dismissal of Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6) because Defendants contend they are entitled to absolute and Eleventh Amendment immunity.[5]

---

summons. *See* Fed. R. Civ. P. 4 (providing that "[a]ny person who is at least 18 years old and not a party may serve a summons and complaint," or "[a]t the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court"); O.C.G.A. § 9-11-4 (providing that process shall be served by: (1) the sheriff's office of the county where the action is brought or where the defendant is found; (2) the marshal or sheriff of the court; (3) any U.S. citizen specially appointed by the court for that purpose; (4) a person 18 years or older who is not a party and has been appointed by the court to serve process; or (5) a certified process server).

[5] Defendants Glanville and Willis also seek dismissal based on the following grounds: (1) Plaintiff's claims against Defendant Glanville are barred by the statute of limitations; (2) pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff has failed to state a claim upon which relief may be granted; (3) Defendants are entitled to qualified immunity; (4) Plaintiff's state law tort claims are barred; and (5) the Georgia Tort Claims Act does not permit punitive damages.

Plaintiff has sued Defendants Glanville and Willis as individuals. (*See* Am. Compl.) However, it is unclear to the Court whether Plaintiff is suing these Defendants in their individual and/or official capacities. As Defendants sought dismissal on both absolute and Eleventh Amendment immunity, for the purposes of ruling on this Motion to Dismiss, the Court will construe both possibilities.

1. Individual Capacity Claims

Defendants Glanville and Willis are entitled to absolute immunity from liability for Plaintiff's alleged claims asserted against them in their individual capacities.

a. Defendant Glanville

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the *clear* absence of *all* jurisdiction" over the subject matter. *Bolin v. Story*, 225 F.3d 1234, 1239 (2000) (citing *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)) (emphasis added). "This immunity applies *even when* the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Id.*

Plaintiff here alleges that Defendant Glanville "stepped outside the bounds of his jurisdiction by violating an American Citizens [sic] Right to have his attorney argue to [sic] why the bond modification should occur." (Am. Compl. ¶ 87.) Plaintiff argues that by "fail[ing] to provide Thorpe with a timely bond hearing in regard to the removal of Thorpe's ankle monitor," Defendant Glanville violated Thorpe's

constitutional rights. (*Id.* ¶ 89-90.) As the Supreme Court explained in *Stump v. Sparkman*, "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge," and a judge does not act in "clear absence of all jurisdiction" if "at the time he took the challenged action he had jurisdiction over the subject matter before him." 435 U.S. at 356.[6] In other words, if the court has constitutional or statutory jurisdiction over the subject matter of the proceeding, "[a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of

---

[6] The Court makes a distinction between "excess of jurisdiction" and the "clear absence of all jurisdiction over the subject matter":

> Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend.

Stump v. Sparkman, 435 U.S. at 356, n. 6 (citing *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1872)). The Court explained this distinction with the following example: "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." *Id.*, n. 7.

grave procedural errors." *Id.* at 359; *Harris v. Deveaux*, 780 F.2d 911, 916 (11th Cir. 1986) (holding that the test regarding whether a judge acted in the "clear absence of all jurisdiction . . . is only satisfied if a judge completely lacks subject matter jurisdiction").

O.C.G.A. § 15-6-8 provides that "[t]he superior courts have authority: [t]o exercise original, exclusive, or concurrent jurisdiction, as the case may be, of all causes, both civil and criminal." Such jurisdiction includes felony offenses of armed robbery, aggravated assault, and battery. There is no question that Defendant Glanville was acting in his judicial capacity in presiding over the proceeding involving the state's prosecution of Plaintiff and that the court properly exercised jurisdiction in that matter.

Defendant Glanville is therefore entitled to absolute judicial immunity from Plaintiff's suit under federal and state law. *See Dykes v. Hosemann*, 776 F.2d 942, 946-47 (11th Cir. 1985) (en banc) (finding judge was entitled to absolute immunity from suit where it was clear that he had subject matter jurisdiction over the underlying dependency proceeding where state statute provided that "[t]he circuit court shall have exclusive original jurisdiction of proceedings in which a child is alleged to be dependent," and that question whether he may have incorrectly concluded that minor actually was dependent did not affect the fact that it was within his power to make that determination); *Robinson v. Becker*, 595 S.E.2d 319, 321 (Ga. Ct. App. 2004) (finding that superior court judge engaged in a judicial act in banning plaintiff from courthouse during criminal trial and stating that "[j]udicial immunity

protects judges against state law claims, as well as civil rights actions brought under 42 U.S.C. § 1983"); *Maddox v. Prescott*, 449 S.E.2d 163, 165 (Ga. Ct. App. 1994) ("Our courts have consistently held that judges are immune from liability in civil actions for acts performed in their judicial capacity.")

Accordingly, the Court **GRANTS** Defendant Glanville's Motion to Dismiss [Doc. 19] Plaintiff's claims against him in his individual capacity.

b. Defendant Willis

Prosecutors are also entitled to absolute immunity from damages for all actions they take associated with the judicial process as an advocate for the government, including those taken in initiating a prosecution, presenting the government's case, and all appearances before the court. *See Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976); *Hart v. Hodges*, 587 F.3d 1288, 1295 (11th Cir. 2009) (citing *Imbler*); *Bolin*, 225 F.3d at 1242 (same); *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1279 (11th Cir. 2002). Prosecutors even have absolute immunity when "filing an information without investigation, filing charges without jurisdiction [or probable cause], filing a baseless detainer, offering perjured testimony, suppressing exculpatory evidence, [and] refusing to investigate . . ." *Hart v. Hodges*, 587 F.3d at 1295 (quoting *Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979)); *Holt v. Crist*, 233 F. App'x 900, 903 (11th Cir. 2007) (stating that prosecutorial immunity "extends to charging a defendant without probable cause"). "While not undertaken literally at the direction of the court, these activities are so intimately associated with the judicial phase of the criminal

process as to cloak the prosecutors with absolute immunity from suits for damages." *Hart*, 587 F.3d at 1295 (quoting *Allen v. Thompson*, 815 F.2d 1433 (11th Cir. 1987); *Imbler*, 424 U.S. at 430 (holding absolute immunity was available for prosecutor's activities in initiating a prosecution and in presenting the state's case because they were "intimately associated with the judicial phase of the criminal process").

District attorneys are similarly entitled to prosecutorial immunity for actions arising under state law.

> Pursuant to Art. VI, Sec. VIII, Par. I(e) of the Georgia Constitution of 1983, district attorneys have immunity from private actions "arising from the performance of their duties." The rationale behind this immunity is that prosecutors, like judges, should be free to make decisions properly within the purview of their official duties without being influenced by the shadow of liability. Therefore, a district attorney is protected by the same immunity in civil cases that is applicable to judges, provided that his acts are within the scope of his jurisdiction.[7] The determining factor appears to be whether the act

---

[7] In Georgia's "criminal justice system, the district attorney represents the people of the state in prosecuting individuals who have been charged with violating [the] state's criminal laws." *State v. Wooten*, 543 S.E.2d 721, 723 (Ga. 2001). The district attorney "has broad discretion in making decisions prior to trial about who to prosecute, what charges to bring, and which sentence to seek." *Id.*

> or omission is "intimately associated with the judicial phase of the criminal process."

Robbins v. Lanier, 402 S.E.2d 342, 343-44 (Ga. Ct. App. 1991) (citing *Holsey v. Hind*, 377 S.E.2d 200, 201 (Ga. Ct. App. 1988) and *Smith v. Hancock*, 256 S.E.2d 627 (Ga. Ct. App. 1979)) (internal quotations omitted). A district attorney's initiation and prosecution of a case involving criminal charges is an act "intimately associated with the judicial phase of the criminal process." *Id.*; *see also Holsey v. Hind*, 377 S.E.2d 200, 201 (Ga. Ct. App. 1988); *Kadivar v. Stone*, 804 F.2d 635, 637 (11th Cir. 1986).

Defendant Willis is therefore entitled to absolute prosecutorial immunity from Plaintiff's suit under federal and state law. Accordingly, the Court **GRANTS** Defendant Willis's Motion to Dismiss [Doc. 19] Plaintiff's claims against her in her individual capacity.

2. Official Capacity Claims

Because a suit against a party in his official capacity is considered a suit against the government entity he or she represents, Defendants Glanville and Willis are entitled to Eleventh Amendment immunity from liability to the extent Plaintiff alleges claims asserted against them in their official capacities. *See Kentucky v. Graham*, 473 U.S. 159, 165-69 (1985) ("[A]bsent [a] waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court. This bar remains in effect when State officials are sued for damages in their official capacity . . . because . . . a judgment against a public servant 'in his official

capacity' imposes liability on the entity that he represents.") (internal quotations and citations omitted).

a. Defendant Glanville

The Georgia constitution vests state court judges with the judicial power of the State. Ga. Const. art. VI, § I, ¶ I. A qualified judge may therefore exercise the state's "judicial power in any court upon the request and with the consent of the judges of that court and of the judge's own court under rules prescribed by law." Ga. Const. art. VI, § 1, ¶ III. As Defendant Glanville is a state official he is entitled to Eleventh Amendment immunity to the extent Plaintiff has asserted damages claims against him in his official capacity. *See Simmons v. Conger*, 86 F.3d 1080, 1085 (11th Cir. 1996) (applying Eleventh Amendment immunity to judge sued in official capacity).

Accordingly, the Court **GRANTS** Defendant Glanville's Motion to Dismiss [Doc. 19] Plaintiff's claims against him in his official capacity.

b. Defendant Willis

The Eleventh Circuit has held that a Georgia district attorney is a state official — rather than a county official — when he is "exercising his discretion in prosecutorial decisions." *Owens v. Fulton County*, 877 F.2d 947, 950-51 (11th Cir. 1989); *Neville v. Classic Gardens*, 141 F. Supp. 2d 1377, 1382 (S.D. Ga. 2001) ("Engaging in a prosecutorial function is the act of a State, not a county, official."); *McClendon v. May*, 37 F.Supp.2d 1371, 1375–76 (S.D. Ga. 1999), *aff'd*, 212 F.3d 599 (11th Cir. 2000); *see also State v. Wooten*, 543

S.E.2d 721, 723 (Ga. 2001) ("the district attorney represents the people of the state in prosecuting individuals who have been charged with violating [the] state's criminal laws").

Thus, to the degree that Plaintiff seeks to hold Defendant Willis liable in her official capacity for acts within the realm of her prosecutorial discretion, Willis is considered a State official entitled to Eleventh Amendment immunity. *Neville*, 141 F. Supp. 2d at 1382 ("The Eleventh Amendment bars federal courts from hearing pendant [S]tate [law] claims for damages brought against State officers who are sued in their official capacities."); *McClendon v. May*, 37 F. Supp. 2d at 1375–76 (S.D. Ga. 1999) (finding that "for all his acts undertaken within the realm of his prosecutorial role, [the] district attorney [] acted as a state official [and] is entitled to Eleventh Amendment immunity on his official capacity claims for his conduct before the grand jury"), *aff'd*, 212 F.3d 599 (11th Cir. 2000); *Abiff v. Slaton*, 806 F. Supp. 993, 996–97 (N.D. Ga. 1992) (holding that county prosecutors enjoyed official capacity, Eleventh Amendment immunity from § 1983 claim), *aff'd*, 3 F.3d 443 (11th Cir. 1993).

Accordingly, the Court **GRANTS** Defendant Willis's Motion to Dismiss [Doc. 19] Plaintiff's claims against her in her official capacity.

III. Conclusion

For the foregoing reasons, as to service deficiencies, the Court **GRANTS without prejudice** the Motions to Dismiss of Defendants Dumas, Jenkins, Boone, and Connelly [Docs. 16, 22]. Dismissal, without prejudice,

while having the effect of discontinuing this federal action, will enable Plaintiff, should he choose to do so, to refile his claims and properly serve Defendants Dumas, Jenkins, Boone, and Connelly. However, Defendants Jenkins, Boone, and Connelly are likely also entitled to immunity; and the claims against Defendant Dumas are likely barred by the applicable statute of limitations. Thus, the Court cautions that refiling may be futile, i.e. that these claims, if refiled, may well be dismissed due to these defenses.

The Court **GRANTS with prejudice** the Motion to Dismiss of Defendants Glanville and Willis [Doc. 19]; and **DENIES AS MOOT** Plaintiff's Motion [Doc. 24] and Defendants Glanville and Willis's Motion to File Excess Pages and Stay Discovery [Docs. 18, 20]. The Clerk is **DIRECTED** to close the case.

IT IS SO ORDERED this 8th day of November, 2018.

/s/Amy Totenberg
AMY TOTENBERG
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Civil Action File
No. 1:18-CV-3817

[Filed November 29, 2018]

DAVID THORPE, an individual,	)
	)
Plaintiff,	)
	)
v.	)
	)
DEXTER DUMAS, an individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,	)
	)
Defendants.	)
	)

MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FED. R. CIV. P 60 (b) AND PLAINTIFF REQUESTS THAT THE CASE BE RE-OPENED, AND ENTRY OF DEFAULT JUDGMENT BE ADDRESSED.

Pursuant to Fed. R. Civ. P 60 (b), Plaintiff David Thorpe, moves the court for relief from the Order dated 11/08/2018 (document 31) and requests that this case be re-opened. With all due respect, it is not the Plaintiff's intent to blame nor make excuses. Plaintiff needs to address the oversights that impact the current status of this case.

1. Pertaining to the dismissal without prejudice of the Plaintiff's complaint against the Defendants **Dumas, Jenkins, Boone and Connelly**. This court expressed the position of not having jurisdiction and dismissed on the grounds of insufficient service.

    a. Plaintiff has admitted to the complexity of this action, pertaining but not limited to the Fed. R. Civ. Procedure. Nonetheless, Plaintiff's slow comprehension should be the direct opposite of the courts and the Defendant's knowledge of said rules. That being said, in support of this motion Plaintiff states:

2. A responsive pleading by a Defendant that fails to dispute personal jurisdiction waives any defect in service or personal jurisdiction, furthermore, the law is settled in the Ninth Circuit Court of Appeals that a Defendant must object to the insufficiency of service **before** filing any answer to any complaint. If a Defendant fails to object **before** filing an answer, any defect in service are waived. See *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1996), see also

Jackson Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982).

a. Jurisdiction attaches if a defendant makes a voluntary general appearance, as by filing an answer through an attorney. *Amen v. Dearborn*, 532 F.2d 554, 558 n 7 (6th Cir. 1976).

3. Court records will show that **Dumas, Jenkins, Boone**, and **Connelly** all did not object to personnel jurisdiction prior to filing their first pleading and also did not object to the insufficiency of service on a motion of its own, or prior to filing a responsive pleading.

4. Pertaining to the dismissal with prejudice of the Plaintiff's complaint against the Defendant's **Glanville** and **Willis**. Plaintiff states the following:

Glanville

a. The courts document states, judges are entitled to absolute judicial immunity from damages for those acts taken in their judicial capacity. It is even more disturbing to hear this court judge (the center stone in this action) state that this immunity applies even when the judge's acts are malicious, in excess of jurisdiction, and with grave errors etc. Now, let's compare that declaration with Rule 1.2 (ABA/GBA) these same judges are demanded that they "shall act at all times in a manner that promotes public confidence in independence, integrity, and impartiality of

the judiciary, and shall avoid impropriety and the appearance of impropriety." Please allow Plaintiff to go further.. reference GA Code 15-6-6 (28 U.S. Code 453) details the oath that each judge takes "I, __ __, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, ..." Plaintiff is honestly, humbly asking this court which of these judicial behaviors supersedes the other? (1) The honorable oath abiding judge or (2) the perhaps well dressed, well-groomed transgressor of the true intent of the United States Constitution?? Plaintiff states it is safe to say, "what we have is a conflict in the application of justice." Furthermore, the court has referenced all cases that benefit the government. Yet, the court has not opposed or even addressed the Plaintiff's legal references, yet again a conflict in the application of justice. In addition, it is necessary to note that all the case references in support of this absolute and judicial immunity strictly deal with acts (actions taken). Plaintiff contends and refers back to Plaintiff's Amended Complaint. Glanville's failure to act constitutes an inaction (failure to do anything). Plaintiff further contends, there is no mention of an inaction which caused the violation, being protected by these immunities. In layman's term. How can there be any jurisdiction to an event that wasn't permitted to materialize (Glanville's failure to act). Regarding the

unique nature of this Plaintiff's contention, Plaintiff is absolutely seeking to set a precedent ruling.

Willis

b. The court documents state: prosecutors are also entitled to absolute and prosecutorial immunity from damages for all actions they take associated with the judicial process as an advocate for the government. Again, it is even more disturbing to hear judges (the center stone of any justice system) casually states the prosecutors ***enjoy*** immunity, even when they file charges without probable cause, file baseless detainers, and offer perjured testimony. (Plaintiff can't even go further) this notion is unjust, injurious and disquieting especially when we consider the bar rules that governs prosecutors. (example) Prosecutors ***shall*** exercise discretion to not pursue criminal charges in appropriate circumstances and seek to protect the innocent (like the Plaintiff). They shall respect the Constitutional Rights of all persons including suspects and Defendant's. Plaintiff states it appears individuals are being placed above the law. What we have here is a conflict in the application of justice. How can this or any court rule let alone dismiss actions in any matter when there is a legitimate conflict? again, and the court has referenced all cases that benefit the government, yet the court has not opposed or

addressed any of the Plaintiff's case references. Yet again, a conflict in the application of justice. In addition, it is imperative to note that all the Defendant's and the courts references and support of these immunities strictly deal with acts (actions). Plaintiff contends and refers back to his complaint: Defendant's failure to act constitutes an inaction. (abstinence) Plaintiff further contends that there is absolutely no mention of an inaction that caused the constitutional violation being covered by said immunities broad jurisdiction. In layman's term. How can there be immunity shielding an action that did not exist? (All the prosecutor's failure to act ABA/GBA Rule 3.8 (a)). Regarding the unique nature of this Plaintiff's contention, Plaintiff is absolutely seeking to set a precedent ruling.

All Defendant's

5. It is sad that the Plaintiff has to remind this court that the Plaintiff is the undisputed victim here. Seeking not only Plaintiff's actual financial losses (as a result of the violations, misconduct, and failures to act of these Defendant's) but all damages that Plaintiff is rightfully entitled too. Nonetheless it is imperative, that these officials be held accountable for their undisputed misconduct. Does this *pro se* really have to express to well-educated criminal justice government officials, whose duty is to balance wrongdoing with punishment? That showing

preferential treatment to any human that does wrong yet is granted protection from punishment is dead wrong!!!!! That notion is a direct conflict to the fundamentals of justice. It is essentially granting a modem-day status of nobility/superiority.

a. That brings the Plaintiff to this point, it appears this court has only addressed the dismissal of the damage claims in the Plaintiff's Complaint. Plaintiff seeks clarity of his rights pertaining to Plaintiff's request that this court declares in the form of a written order that misconduct did occur on behalf of every Defendant in this Complaint. (See the Plaintiff's initial disclosure for statutes, rules, and Constitutional Rights violated.)

b. Referencing Rule 12 (g) (2) it requires a defendant to raise the defense of failure to state a claim in a single motion. See *Am. Assn of Naturopathic Physicians v. Hayhurst*, *227 F.3d 1104, 1107 (9th Cir. 2000).* Plaintiff states Defendant's have not filed a defense motion of failure to state a claim in a single motion on its own.

c. Plaintiff must add the fact that every request Plaintiff has asked of this court (permission to amend complaint, extension to serve the Defendant, and entry of default etc.) have gone unaddressed!!!

d. Plaintiff has paid his fees with good faith and placed his trust back into this system. Despite the system applying a poor application of fairness let alone justice thus far.

Conclusion

Accountability is always commensurate with responsibility, when one is responsible, one can be held liable for your action or inaction. It can be legal, contractual or even moral.

WHEREFORE, Plaintiff asks that Plaintiff's case be re-opened for the furtherance of justice and accountability.

Dated: 11-29-2018

Respectfully submitted,

/s/David Thorpe

David Thorpe
Pro Se Plaintiff
4902 Fielding Way
Stone Mountain, GA 30088

fax # 1-888-828-0034
phone number 1-404-428-8276

* * *

[*Certification of Service Omitted in the Printing of this Appendix*]

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10089-HH

[Filed October 28, 2019]

DAVID THORPE,	)
	)
Plaintiff - Appellant,	)
	)
versus	)
	)
DEXTER DUMAS,	)
an individual,	)
GEORGE JENKINS,	)
an individual,	)
LAUREN BOONE,	)
an individual,	)
JEFFREY S. CONNELLY,	)
an individual,	)
FANI WILLIS,	)
an individual, et al.,	)
	)
Defendants - Appellees.	)
	)

Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: ED CARNES, Chief Judge, WILLIAM PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by David Thorpe is DENIED.

ENTERED FOR THE COURT:

/s/Ed Carnes
CHIEF JUDGE

ORD-41

APPENDIX F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Civil Action File
No. 1:18-CV-3817

[Filed January 8, 2019]

DAVID THORPE, an individual,	)
	)
Plaintiff,	)
	)
v.	)
	)
DEXTER DUMAS, an individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,	)
	)
Defendants.	)
	)

NOTICE OF APPEAL

Now comes the Plaintiff, David Thorpe, and hereby appeals to the Untitled States Court of Appeals for the Eleventh Circuit from: (1) the United States District Courts Northern District of Georgia; orders of

dismissals dated November 8, 2018, (2) the United States District Courts Northern District of Georgia order denying motion for relief from order/judgement, order denying motion to re-open case, and order denying motion for default judgment dated December 11, 2018.

Dated: 01-08-19

Respectfully submitted,

/s/David Thorpe
David Thorpe
Pro Se Plaintiff
4902 Fielding Way
Stone Mountain, GA 30088

* * *

[*Certification of Service and Appeal Receipt Sheet Omitted in the Printing of this Appendix*]