

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 18-7224

KEVIN LYNDELL YATES,

Plaintiff - Appellant,

v.

AMY M. HARPER, Attorney of Law,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:18-cv-00777-AJT-TCB)

Submitted: December 20, 2018

Decided: December 27, 2018

Before DIAZ and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Kevin Lyndell Yates, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kevin Lyndell Yates appeals the district court's order dismissing his 42 U.S.C. § 1983 (2012) complaint under 28 U.S.C. § 1915A(b) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Yates v. Harper*, No. 1:18-cv-00777-AJT-TCB (E.D. Va. filed July 19, 2018 & entered July 26, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: December 27, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7224
(1:18-cv-00777-AJT-TCB)

KEVIN LYNDELL YATES

Plaintiff - Appellant

v.

AMY M. HARPER, Attorney of Law

Defendant - Appellee

JUDGMENT

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

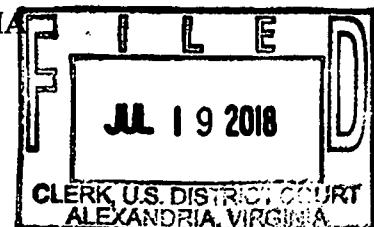
This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Kevin Lyndell Yates,
Plaintiff,
)
v.
)
Amy M. Harper,
Defendant.
)



ORDER

Kevin Lyndell Yates, a Virginia inmate proceeding *pro se*, has filed a civil action asserting claims under 28 U.S.C. § 1983. After reviewing plaintiff's complaint, his claims will be dismissed, pursuant to 28 U.S.C. § 1915A(b)(1), for failure to state a claim.¹

In reviewing a complaint pursuant to § 1915A, a court must dismiss a prisoner complaint that is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915A(b)(1). Whether a complaint states a claim upon which relief can be granted is determined by "the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." *Sumner v. Tucker*, 9 F. Supp. 2d 641, 642 (E.D. Va. 1998). Thus, the alleged facts are presumed true, and the complaint should be dismissed only when "it is clear that no relief could

¹ Section 1915A provides:

(a) **Screening.**—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for dismissal.**—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief can be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

In his complaint, plaintiff alleges that defendant, the attorney who represented plaintiff in his criminal cases in the Fauquier County Circuit Court, violated plaintiff’s civil rights.² Dkt. No.

1. Here, plaintiff’s allegations fail to state a claim upon which relief can be granted.

Defendant was plaintiff’s defense counsel, and thus was not acting under the color of law of the state. Polk County v. Dodson, 454 U.S. 312, 325 (1981) (“a public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding”); Ward v. Ghee, 8 F.3d 823 (4th Cir. Oct. 13, 1993) (table; available at 1993 WL 410357) (citations omitted) (“[d]efense attorneys do not act ‘under color of’ state law and are, therefore, not amenable to suit under § 1983, whether privately retained, appointed by the state, or employed as public defenders”). Thus, even if plaintiff were allowed to particularize and amend the complaint, such efforts would prove futile because defendant may not be held liable in a claim under 28 U.S.C. § 1983.

Accordingly, it is hereby

ORDERED that this action be and is DISMISSED, WITH PREJUDICE, for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1); and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(g),³ this dismissal may affect plaintiff’s ability to proceed in forma pauperis in future civil actions; and it is further

² It is noted that plaintiff has filed a 28 U.S.C. § 2254 petition regarding these convictions which was dismissed as time barred. Yates v. Commonwealth, Case No. 1:16cv1234 (AJT/MSN).

³ 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or

ORDERED that the Clerk record this dismissal for purposes of the Prison Litigation Reform Act.

To appeal, plaintiff must file a written notice of appeal with the Clerk's Office within thirty (30) days of the entry of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order plaintiff wants to appeal. Failure to timely file a notice of appeal waives the right to appeal this decision. Plaintiff need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to enter final judgment in favor of defendant Amy M. Harper, pursuant to Fed. R. Civ. P. 58, to send of copy of this Order to plaintiff, and to close this civil action.

Entered this 19 day of July 2018.

Alexandria, Virginia



Anthony J. Trenga
United States District Judge

appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

Kevin Lyndell Yates,)
Plaintiff,)
v.) Civil Action No. 1:18cv777-AJT-TCB
Amy M. Harper,)
Defendant.)

JUDGMENT

Pursuant to the order of this Court entered on July 19th, 2018 and in accordance with
Federal Rules of Civil Procedure 58, JUDGMENT is hereby entered in favor of the Defendant,
Amy M. Harper, and against the Plaintiff, Kevin Lyndell Yates.

FERNANDO GALINDO, CLERK OF COURT

By: _____ /s/
Deputy Clerk

Dated: July 26th, 2018
Alexandria, Virginia