UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7438

CHARLES JORDAN,

Plaintiff - Appellant,

v.

JOHN H. MAGILL; JAMES G. BOGLE; JUDGE PAUL M. BURCH,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. David C. Norton, District Judge. (5:18-cv-02852-DCN)

Submitted: April 18, 2019 Decided: April 22, 2019

Before WILKINSON, MOTZ, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Charles Jordan, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Jordan appeals the district court's order adopting the magistrate judge's recommendation to dismiss, after a 28 U.S.C. § 1915(e) (2012) review, Jordan's 42 U.S.C. § 1983 (2012) complaint. On appeal, we confine our review to the issues raised in the Appellant's brief. *See* 4th Cir. R. 34(b). Because Jordan's informal brief and supplement thereto do not dispute the bases for the district court's dismissal, Jordan has forfeited appellate review of the district court's order. *See Williams v. Giant Food Inc.*, 370 F.3d 423, 430 n.4 (4th Cir. 2004). Accordingly, we deny Jordan's motion for appointment of counsel and affirm the district court's judgment. 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: April 22, 2019

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CHARLES JORDAN

Plaintiff - Appellant

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JOHN H. MAGILL; JAMES G. BOGLE; JUDGE PAUL M. BURCH

Defendants - Appellees

J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK

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

Charles Jordan, Plaintiff, vs. John H. Magill; James G. Bogle; and Judge Paul M. Barch, Defendants.	C/A No.: 5:18-cv-2852 DCN **ORDER**

The above referenced case is before this court upon the magistrate judge's recommendation that this complaint be dismissed without prejudice and without issuance and service of process.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).[1] **Objections to the Magistrate Judge's Report and**

[1]In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the

Recommendation were timely filed on November 13, 2018 by plaintiff.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation is **AFFIRMED,** and the complaint is **DISMISSED** without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.

David C. Norton
United States District Judge

November 15, 2018
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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appellate level of his failure to object to the magistrate judge's report.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Charles Jordan, Plaintiff, vs. John H. Magill, James G. Bogle, and Judge Paul M. Burch, Defendants.	C/A No. 5:18-cv-02852-DCN-KDW Report and Recommendation

Charles Jordan ("Plaintiff") is a civil detainee in the South Carolina Sexually Violent Predator Treatment Program ("SVPTP"). Proceeding pro se, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983, seeking injunctive relief. (ECF No. 1 at 4, 6). Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(e)(D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed by pro se litigants and submit findings and recommendations to the district court.

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of the pro se Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915. The review has been conducted in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978).

The Complaint in this case was filed under 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "fails to state a claim on

which relief may be granted" or is "frivolous or malicious." 28 U.S.C. §1915(e)(2)(B)(I), (ii). Hence, under 28 U.S.C. §1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. *Neitzke v. Williams*, 490 U.S. 319 (1989).

This court is required to liberally construe pro se pleadings, *Estelle v. Gamble*, 429 U.S. at 97, holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 5 (1980). The mandated liberal construction afforded *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a pleading to "conjure up questions never squarely presented" to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

DISCUSSION

Plaintiff alleges under 42 U.S.C. § 1983 that Defendants violated his Fourteenth Amendment due process rights because he is civilly detained based on an allegedly non-existent and false charge. The Defendants named are the Director of the South Carolina Department of Mental Health, the Assistant Attorney General who prosecuted the civil detention case against Plaintiff, and the judge who entered the detention judgment. Plaintiff asks the court to order the charge expunged.

Public records[1] show Plaintiff was civilly committed to the Sexually Violent Predator Treatment Program as a result of a jury trial on or about August 26, 2008 in Darlington County

[1] *See generally*, https://publicindex.sccourts.org/Darlington/PublicIndex/PISearch.aspx (with search parameters limited by Plaintiff's name). The court may take judicial notice of factual information located

(No. 2006-CP-16-00519). Plaintiff has filed multiple PCRs and habeas actions and appeals in state court without success regarding the same argument here. Plaintiff has previously argued and argues here that his prior indictment for Lewd Act on a Child in 2003(the qualifying conviction for his 2008 commitment) is a charge that does not exist. Accordingly, Plaintiff argues, his Fourteenth Amendment rights have been violated.

To the extent Plaintiff is seeking review of state court decisions in this federal district court, the United States Supreme Court is the only federal court with general statutory jurisdiction to review state court judgments. *See* 28 U.S.C. § 1257 (U.S. Supreme Court review is discretionary by way of a writ of certiorari and is not an appeal of right); *District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 476–82 (1983). In civil, criminal, and other cases heard in the courts of the State of South Carolina, appeals of state court decisions are within the jurisdiction of the South Carolina Court of Appeals and/or the South Carolina Supreme Court. *See Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). As to any challenges Plaintiff may be making to final judgments in prior state court proceedings, the *Rooker–Feldman* Doctrine bars them. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Feldman*, 460 U.S. 462. To the extent Plaintiff claims any injury caused by errors in state court proceedings, any such state court ruling cannot be reviewed or set aside and such relief cannot be granted by the United States District Court for the District of South Carolina. *See Rooker*, 263 U.S. 413; *Feldman*, 460 U.S. 462. This prohibition on review of state court proceedings by federal district courts is implicated when a ruling in the plaintiff's favor on his claims in connection with state court proceedings

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in postings on government websites. *See In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182, 2008 WL 4185869 at * 2 (E.D. La. Sept. 8, 2008) (noting that courts may take judicial notice of governmental websites including other courts' records); *Williams v. Long*, No. 07-3459-PWG, 2008 WL 4848362 at *7 (D. Md. Nov. 7, 2008) (noting that some courts have found postings on government websites as inherently authentic or self-authenticating).

would, necessarily, require the federal court to overrule (or otherwise find invalid) various orders and rulings made in the state court. Such a result is prohibited under the *Rooker-Feldman* Doctrine. *See Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293–94 (2005); *Davani v. Va. Dep't of Transport.*, 434 F.3d 712, 719–20 (4th Cir.2006). Because the *Rooker-Feldman* Doctrine is jurisdictional, it may be raised by the court *sua sponte*. *American Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003). According to the Fourth Circuit, "the *Rooker-Feldman* doctrine applies . . . when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself." *Davani,* 434 F.3d at 713. Plaintiff's Complaint is subject to summary dismissal based on this doctrine.

To the extent that, by seeking to have his record expunged, Plaintiff seeks release, such relief is not cognizable in a § 1983 action. Plaintiff cannot obtain his "freedom" or release from prison in this civil rights action. *See Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (stating that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983"); and *Johnson v. Ozmint*, 567 F. Supp. 2d 806, 823 (D.S.C. 2008) (release from prison is not a remedy available under 42 U.S.C. § 1983). Since Plaintiff has had a Section 2254 action adjudicated on the merits with respect to his SVPTP committment, *see Jordan v. McMaster*, No. 8:09-cv-00051-CMC (D.S.C. Jan. 29, 2010, summary judgment granted for respondents), he must seek leave to file a successive habeas corpus petition. Leave from the United States Court of Appeals for the Fourth Circuit is required under the Anti-Terrorism and Effective Death Penalty Act of 1996 for filers of successive § 2254 petitions. *See In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1996) ("Under the AEDPA, an individual may not file a second or successive § 2254 petition for a writ of habeas corpus or § 2255 motion to vacate

sentence without first receiving permission to do so from the appropriate circuit court of appeals."); and *In re Fowlkes*, 326 F.3d 542, 544 (4th Cir. 2003). Before Plaintiff attempts to file another petition in the United States District Court for the District of South Carolina, he must seek and obtain leave (*i.e.*, written permission) from the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 2244(b)(3).

Further, an additional basis for summary dismissal is that Plaintiff's claims are barred by *Heck*. In a § 1983 action, a district court is required to consider whether a judgment in favor of a plaintiff would necessarily imply the invalidity of the conviction; if so, the complaint must be dismissed, unless the plaintiff can demonstrate that the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. at 486-87. It follows where Plaintiff here is asking this federal court to expunge the record of his conviction based on alleged due process violations, a judgment in his favor would imply the invalidity of his conviction. As such, this Complaint must be dismissed unless Plaintiff can show his conviction has been overturned. Plaintiff here cannot show that his conviction has been overturned or favorably terminated. Plaintiff has been unsuccessful in repeated post-conviction collateral relief proceedings both in state court and this court.[2] Plaintiff's action is subject to summary dismissal on these grounds.

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[2] Cognizant of *Goode v. Central Virginia Legal Aid Society, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015), and its progeny, the undersigned notes amendment of the complaint here would be futile and the basis of this summary dismissal makes clear Plaintiff could not "save his action by merely amending his complaint" as his convictions and commitment have not been overturned. *Id.* Moreover, the dismissal here is without prejudice because in the event Plaintiff's conviction and/or commitment is overturned, in the future, he may again attempt to pursue a § 1983 action. The limitations period for a post-trial civil rights action will not begin to run until the cause of action accrues, *i.e.*, until the conviction is set aside; therefore, a potential § 1983 plaintiff does not have to worry about the running of the statute of limitations while he is taking the appropriate steps to have a conviction overturned. *See Wallace v. Kato*, 549 U.S. 384, 391-92 (2007).

Moreover, Defendant Judge Burch is subject to dismissal based on judicial immunity. The doctrine of absolute immunity for acts taken by a judge in connection with his or her judicial authority and responsibility is well established and widely recognized. *See Mireles v. Waco*, 502 U.S. 9, 11–12 (1991). Additionally, Defendant Bogle as an assistant attorney general is subject to summary dismissal based on prosecutorial immunity. Prosecutors are protected by immunity for activities in or connected with judicial proceedings. *Van de Kamp v. Goldstein*, 555 U.S. 335, 338-44 (2009); *Dababnah v. Keller-Burnside*, 208 F.3d 467, 470 (4th Cir. 2000).

RECOMMENDATION

Accordingly, for all the reasons above, it is recommended that the district court dismiss the Complaint in this case *without prejudice and without issuance and service of process*. *See Brown v. Briscoe*, 998 F.2d 201, 202-04 (4th Cir. 1993); *see also* 28 U.S.C. § 1915(e)(2)(B).

IT IS SO RECOMMENDED.

November 1, 2018
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

Plaintiff's attention is directed to the important notice on the next page.

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