

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

ROBERT WILLIAM WAZNEY, Petitioner,

v.

JAMES C. CAMPBELL CLERK OF COURT, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

APPENDIX

ROBERT WILLIAM WAZNEY, Pro-se (forced)
990 Wisacky Hwy.
Bishopville, SC 29010
Indigent Petitioner
803-428-2800

TABLE OF CONTENTS

A	JUDGMENT of 4th Circuit COA
B	OPINION AND ORDER of S.C. District Court
C	REPORT OF MAGISTRATE JUDGE
D	ORDER denying Petition for Rehearing
E	Complaint--WRIT OF SUPERVISORY CONTROL
F	Complaint--COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
G	PETITION FOR REHEARING REQUEST FOR EN BANC CONSIDERATION
H	OBJECTION TO ENTRY 17

FILED: May 29, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6084
(6:18-cv-02610-HMH)

ROBERT WILLIAM WAZNEY

Plaintiff - Appellant

v.

STATE OF SOUTH CAROLINA

Defendant - Appellee

J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX A

UNPUBLISHED

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

No. 19-6084

ROBERT WILLIAM WAZNEY,

Plaintiff - Appellant,

v.

STATE OF SOUTH CAROLINA,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:18-cv-02610-HMH)

Submitted: May 23, 2019

Decided: May 29, 2019

Before KING and RICHARDSON, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert William Wazney, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert William Wazney appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Wazney v. South Carolina*, No. 6:18-cv-02610-HMH (D.S.C. Nov. 20, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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

Robert William Wazney,)	
)	
Plaintiff,)	C.A. No. 6:18-2610-HMH-KFM
)	
vs.)	OPINION & ORDER
)	
James C. Campbell,)	
)	
Defendant.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Robert William Wazney ("Wazney"), a state prisoner proceeding pro se, alleges a 42 U.S.C. § 1983 claim alleging that the Defendant James C. Campbell, a clerk with the Sumter County Family Court, failed to file legal documents and assessed substantial filing fees. In his Report and Recommendation, Magistrate Judge McDonald recommends dismissing this action without prejudice and without issuance and service of process. (R&R 4, ECF No. 17.)

Wazney filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir.

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

APPENDIX B

1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of Wazney's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. The court, however, was able to glean one specific objection. Wazney objects to the magistrate judge's finding that the Defendant is entitled to quasi-judicial immunity. Wazney claims that the Defendant, in his role as a court clerk with the Sumter County Family Court, refused to file certain documents and imposed substantial filing fees that have limited his access to the courts. (Objs., generally, ECF No. 21.) This objection is without merit.

Clerks of court are afforded quasi-judicial immunity from suit on claims involving "tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." Bush v. Rauch, 38 F.3d 842, 847 (6th Cir. 1994); Ross v. Baron, No. 12-1272, 2012 WL 3590914, at *1 (4th Cir. Aug. 22, 2012) (unpublished) ("[A] court clerk is generally entitled to quasi-judicial immunity."). Filing documents and assessing filing fees are integral to the judicial process. Wymore v. Green, No. 06-3395, 2007 WL 2340795, at *3 (10th Cir. Aug. 17, 2007) (unpublished) (affirming district court's grant of absolute quasi-judicial immunity to a state court clerk that allegedly refused to file the prisoner's documents); Martin v. Rush, No. 13-693, 2013 WL 2285948, at *5 (D.S.C. May 23, 2013) (unpublished) (finding that quasi-judicial immunity applied to clerk who allegedly failed to provide him with a hearing transcript despite request); Coleman v. Fountain, No. 3:17CV266, 2018 WL 2124091, at *3 (E.D. Va. May 8, 2018) (unpublished) (finding clerks immune from

suit complaining about assessment of filing fees based on quasi-judicial immunity).

Accordingly, after review, the court finds that Wazney's specific objection is without merit.

Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation and incorporates it herein by reference. Further, Wazney cannot cure the defects in his complaint by amendment.

Goode v. Cent. Va. Legal Aid Soc'y, Inc., 807 F.3d 619, 623 (4th Cir. 2015). Therefore, the court declines to afford leave to amend.

It is therefore

ORDERED that this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
November 20, 2018

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Robert William Wazney,

Petitioner,

vs.

James C. Campbell,

Respondent.

Civil Action No. 6:18-2610-HMH-KFM

REPORT OF MAGISTRATE JUDGE

The petitioner, proceeding *pro se*, has filed a "Writ of Supervisory Control" which this court construes as a civil action brought pursuant to 42 U.S.C. § 1983 seeking relief for violations of his constitutional rights. The petitioner is a state prisoner, and files this action *in forma pauperis* under 28 U.S.C. § 1915. Pursuant to 28 U.S.C. 636(b)(1) and District of South Carolina Local Civil Rule 73.02(B)(2)(e), this magistrate judge is authorized to review all pretrial matters in such *pro se* cases and to submit findings and recommendations to the District Court.

BACKGROUND

The petitioner filed this action on September 24, 2018. He is currently incarcerated at the South Carolina Department of Corrections' Lee Correctional Institution in Bishopville, South Carolina. By order filed on September 27, 2018, the petitioner was advised that his case was not in proper form and was given instructions on how to bring it into proper form so that this court could conduct initial review. The petitioner has complied with the court's order (docs. 1-6, 10).

RULE 60 MOTION

The petitioner moves pursuant to Rule 60(a) to correct an error in the caption of the court's September 27, 2018 order (doc. 12-3). The petitioner asserts that James C.

APPENDIX C

Campbell, Clerk of Court¹, should have been listed as the respondent, as he designated in his initial pleading he entitled "Writ of Supervisory Control" (doc. 1). The undersigned had considered this initial claim as one against the state, but the petitioner makes clear that he intends to sue James C. Campbell, Clerk of Court, in his individual and official capacity. Accordingly, the petitioner's motion is GRANTED such that the caption of the September 27, 2018 will be modified to reflect the respondent as James C. Campbell and that all other documents filed in this case will likewise be so captioned.

ALLEGATIONS

The petitioner names Campbell as the sole respondent in this action and identifies him as the Clerk of Court (*Id.*). The petitioner indicates that he sues Campbell in his official and individual capacities (*Id.* at 1). The petitioner alleges that the "Sumter County Family Court has dismissed case No. 2015-DR-43-0046 which is intertwined with my misconviction, and other collateral cases, where its Clerk, JAMES C. CAMPBELL committed unreasonable actions involving reckless indifference with a pattern of abuse that resulted in a violation of [his] rights" (*Id.*). He further alleges that Campbell "has repeatedly breached [his] duty to perform the ministerial act of accepting technically sufficient papers which are pertinent to issues in the cases and interposed substantial fees as a barrier to access to courts, affecting the law of the cases, denying my opportunity to be heard, frustrating my claims, preventing my challenge of conviction, affecting my substantial rights, causing injury and harm to me" (*Id.* at 1). He claims the respondent's actions have deprived the [state] court of information and, as such, the [state] court has not ruled on many issues. As relief, he seeks monetary damages; an order holding in abeyance the state court proceeding; a change of venue, or to have the Clerk removed, or both; and to vacate the lower court judgment (*Id.* at 1-2).

¹The undersigned observes that the petitioner names two defendants-James C. Campbell and James C. Campbell, Clerk of Court. As these individuals are the same person, only James C. Campbell shall be identified in the caption of this matter.

STANDARD OF REVIEW

The petitioner filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a respondent who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992).

As a *pro se* litigant, the petitioner's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). However, even under this less stringent standard, the *pro se* pleading remains subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

In order to state a claim upon which relief can be granted, the petitioner must do more than make mere conclusory statements. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570. The reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

DISCUSSION

The instant action is subject to dismissal due to the petitioner's failure to state a claim upon which relief can be granted. As previously set forth, the petitioner named Campbell as the sole respondent and identifies him as the Clerk of Court. County clerks of court are part of the State of South Carolina's unified judicial system. See S.C. Const. Article V, § 24; §§ 14-1-40, 14-17-10, South Carolina Code of Laws (as amended). It is well settled that clerks of court and other court support personnel are

entitled to immunity similar to judges when performing their quasi-judicial duties. See *Jarvis v. Chasanow*, 448 Fed. App'x.406 (4th Cir. 2011); *Stevens v. Spartanburg Cty. Prob., Parole, and Pardon Servs.*, C/A No. 6:09-795-HMH-WMC, 2010 WL 678953, at *7 (D.S.C. Feb. 23, 2010). Absolute judicial immunity extends to persons other than judges when performance of judicial acts or activities as official judicial aides are involved and is referred to as quasi-judicial immunity. See *Abebe v. Propes*, C.A. No. 0:11-1215-MBS-PJG, 2011 WL 2581385, *3 (D.S.C. June 3, 2011) (collecting cases), adopted by, 2011 WL 2600593 (D.S.C. June 29, 2011). In the underlying action, all petitioner's allegations against Campbell appear to arise out of his performance of judicial acts or activities. As such, he is entitled to quasi-judicial immunity and should be dismissed from this action.

The petitioner cannot cure the defects in his complaint by mere amendment. See generally *Goode v. Cent. Virginia Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015); *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066 (4th Cir. 1993). Accordingly, the undersigned recommends that the district court decline to automatically give the petitioner leave to amend and dismiss this action *without prejudice* and without issuance and service of process.

s/Kevin F. McDonald
United States Magistrate Judge

October 23, 2018
Greenville, South Carolina

The petitioner's attention is directed to the important WARNING on the following page.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6084
(6:18-cv-02610-HMH)

ROBERT WILLIAM WAZNEY

Plaintiff - Appellant

v.

STATE OF SOUTH CAROLINA

Defendant - Appellee

ORDER

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

Entered at the direction of the panel: Judge King, Judge Richardson, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

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