Appendix A

No. 18-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARRY WAYNE ADAMS,

Plaintiff-Appellant,

v.

CALHOUN COUNTY; STATE OF MICHIGAN; MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

ORDER

Before: THAPAR and BUSH, Circuit Judges.*

Barry Wayne Adams, a pro se Michigan resident and former state prisoner, petitions the court to rehear its April 24, 2019, order affirming a district court judgment dismissing his civil rights complaint filed under various civil statutes, including 42 U.S.C. §§ 1981-1983, as well as various criminal statutes.

Upon review, we conclude that we did not misapprehend or overlook any point of law or fact when we issued our prior order. *See* Fed. R. App. P. 40(a). Accordingly, we **DENY** Adams's petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*The Honorable Damon J. Keith was on the panel who issued the original panel opinion, but due to his death on April, 28, 2019, did not participate in the rehearing process.

Appendix B

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 24, 2019
DEBORAH S. HUNT, Clerk

BARRY WAYNE ADAMS, Plaintiff-Appellant, v. CALHOUN COUNTY; STATE OF MICHIGAN; MICHIGAN DEPARTMENT OF CORRECTIONS, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: KEITH, THAPAR, and BUSH, Circuit Judges.

Barry Wayne Adams, a pro se Michigan resident and former state prisoner, appeals a district court judgment dismissing his civil rights complaint filed under various civil statutes, including 42 U.S.C. §§ 1981-1983, as well as various criminal statutes. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2016, Adams sued the County of Calhoun, Michigan ("the County"), the State of Michigan, the Michigan Department of Corrections ("MDOC"), and unspecified Jane and John Doe defendants, seeking monetary and injunctive relief. In his amended complaint, Adams, who identifies himself as a "natural person," acknowledged that he was incarcerated from March 5, 2007, through February 29, 2015, for failure to pay child support. He claims that the defendants and their "agents and confederates" violated his rights under: (1) the Fourteenth Amendment by

interfering with his "Constitutional right" of paternal dominion over his two minor daughters; and (2) the Thirteenth Amendment and the "Anti-Peonage" statute, 42 U.S.C. § 1994, by improperly arresting and incarcerating him for failure to pay child support. He characterized the child-support payments as a "fraudulently-assigned 'debt'" and his prosecution and incarceration as "being deprived of his liberty," and he asserted that he was placed in a "de facto system of 'peonage'" for failure to pay the debt.

The MDOC and the State of Michigan moved to dismiss the complaint based on Eleventh Amendment immunity, and the County moved to dismiss the complaint on numerous grounds. A magistrate judge recommended that the district court dismiss Adams's claims against the MDOC and Michigan and that it construe the County's motion to dismiss as a motion to quash improper service of process. The district court overruled Adams's objections and rejected his argument that the magistrate judge had overlooked the fact that his complaint also asserted claims under 18 U.S.C. §§ 1582, 1593A, 1595, and 28 U.S.C. § 1651. The district court determined that: Adams lacked standing to pursue relief under the various criminal statutes; the MDOC and Michigan were entitled to Eleventh Amendment immunity; and, even though the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595, provided for a civil remedy, the statute did not abrogate state sovereign immunity. Therefore, the district court granted the MDOC and Michigan's motion to dismiss, quashed improper service against the County, and granted Adams fourteen days to effect proper service on the County.

Subsequently, the County moved to dismiss the complaint, *see* Fed. R. Civ. P. 12(b)(6), arguing that Adams's claims were barred by the *Rooker-Feldman*[1] doctrine. Adams responded and moved for summary judgment. The magistrate judge recommended that the district court grant the County's motion because Adams's complaint constituted a challenge to the state-issued child support order and his 2007 conviction for failure to pay child support. The magistrate judge also recommended denying Adams's motion for summary judgment and dismissing the unserved Jane

[1]*D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

and John Doe defendants. The district court rejected Adams's objections, adopted the magistrate judge's recommendation, and dismissed the case. The district court also denied Adams's motion for reconsideration.

On appeal, Adams reasserts his claims. He argues that the district court erred when it: (1) determined that Michigan and the MDOC were entitled to Eleventh Amendment immunity because those defendants are "de facto corporate" entities; and (2) concluded that his claims were barred by the *Rooker-Feldman* doctrine because he was not "collaterally" attacking his "illegal incarceration" but instead sought relief under 18 U.S.C. §§ 1581-95, 28 U.S.C. § 1651, and 42 U.S.C. § 1994. In addition, he argues that the district court erred when it: ordered him to "re-serve" the County because he completed his initial service using the United States Postal Service; mischaracterized his claims; and failed to acknowledge the allegedly vindictive prosecution asserted in his complaint. Adams requests oral argument, and he moves for summary disposition of the appeal based on the defendants' failure to file appellate briefs.

We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 572 (6th Cir. 2008). To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The district court properly dismissed Adams's claims against the State of Michigan and the MDOC. The Eleventh Amendment "bars all suits, whether for injunctive, declaratory or monetary relief, against the state and its departments." *Thiokol Corp. v. Mich. Dep't of Treasury*, 987 F.2d 376, 381 (6th Cir. 1993) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-01 (1984)); *see Will v. Mich. Dep't of State Police*, 491 U.S. 58, 67 (1989). Michigan has not consented to civil suits in federal courts. *See Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986). Thus, the Eleventh Amendment bars Adams's claims against the State and the MDOC. *See Sims v. Mich. Dep't of Corr.*, 23 F. App'x 214, 215 (6th Cir. 2001) (holding that the "MDOC

is entitled to Eleventh Amendment immunity"). Despite Adams's reliance on 18 U.S.C. § 1595, the district court properly determined that Congress did not abrogate state sovereign immunity through the TVPRA. *See Mojsilovic v. Okla. ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1134 (10th Cir. 2016). Moreover, the district court properly determined that Adams lacked standing to bring claims pursuant to criminal statutes that do not provide for a private cause of action because, in general, " a private citizens lacks a judicially cognizable interest in the prosecution ... of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

The district court also properly dismissed Adams's challenge to the state-issued child-support order pursuant to the *Rooker-Feldman* doctrine. Under this doctrine, a federal district court should not entertain a case brought by a litigant who lost in state court and seeks appellate review of that decision by a federal court. *See Feldman*, 460 U.S. at 482 & n.16; *Rooker*, 263 U.S. at 415-16. The doctrine is confined to cases that are "[1] brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). *Exxon* emphasized the "limited" applicability of the doctrine. *Id.* at 291. "[T]he pertinent inquiry after *Exxon* is whether the 'source of the injury' upon which plaintiff bases his federal claim is the state court judgment . . . ." *Kovacic v. Cuyahoga Cty. Dep't of Children & Family Servs.*, 606 F.3d 301, 309 (6th Cir. 2010) (quoting *McCormick v. Braverman*, 451 F.3d 382, 394-95 (6th Cir. 2006)). As we have held, "[i]f the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim." *McCormick*, 451 F.3d at 393; *see also Coles v. Granville*, 448 F.3d 853, 858 (6th Cir. 2006).

To the extent that Adams challenged the determination that he was required to pay child support, the claim is barred by the *Rooker-Feldman* doctrine. Adams alleged that the State of Michigan improperly ordered him to pay child support. That order is the source of Adams's alleged injury. *See Kovacic*, 606 F.3d at 309. Adams's federal claim for relief could be predicated only upon a determination that the State of Michigan improperly ordered him to pay child support.

Were the district court to provide the relief sought by Adams, the court would, in essence, be reviewing and overturning the state-issued child-support order. The district court properly determined that it lacked jurisdiction to conduct such a review or to grant the relief as requested. *See Feldman*, 460 U.S. at 482 & n.16.

Adams also sought monetary relief for his allegedly improper incarceration for failure to pay child support. Although not addressed by the district court, this claim is barred by the holding in *Heck v. Humphrey*, 512 U.S. 477 (1994). Under *Heck*, a plaintiff may not bring a § 1983 action to obtain damages "where success *would necessarily* imply the unlawfulness of a (not previously invalidated) conviction or sentence." *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005). Adams does not seek to overturn his prior conviction for failure to pay child support, but he expressly requested monetary relief for the allegedly invalid conviction. He claimed that the defendants and its "agents and confederates" unconstitutionally arrested and incarcerated him for failing to pay child support in violation of the Thirteenth and Fourteenth Amendments and the Anti-Peonage statute. Adams attempts to characterize his claims as a challenge to his alleged placement into involuntary servitude, but he acknowledges that he is challenging "the previous illegal 8-year incarceration" and the "non-frivolous claims that specifically identified the cause for [his] imprisonment." He also acknowledges that the disposition of his claims "hinge[s] on whether the deciding jurists choose[] to accept . . . that [his] 8-year incarceration for 'failure to pay' conforms to the accepted definition of 'peonage.'" Therefore, his request for monetary relief "*would necessarily* imply the unlawfulness" of his incarceration for failure to pay child support. *See id.* Because Adams failed to allege that his conviction has been overturned or called into question through other processes, this claim is barred by *Heck*. *See* 512 U.S. at 487.

Adams's remaining appellate arguments do not warrant relief. He presents no argument that the allegedly erroneous order that he "re-serve" the County prejudiced the outcome of the case or resulted in an improper application of the *Rooker-Feldman* doctrine. In addition, his vindictive-prosecution claim was properly dismissed. "[A] criminal prosecution which would not have been initiated but for vindictiveness is constitutionally prohibited." *Bragan v. Poindexter*, 249 F.3d 476, 481 (6th Cir. 2001). Vindictive prosecution may be established in two ways: First, "a

defendant may demonstrate 'actual vindictiveness,' i.e., he may establish through objective evidence that a prosecutor acted in order to punish the defendant for standing on his legal rights." *Id.* (quoting *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C. Cir. 1987)). "Second, a defendant may establish that, in the particular factual situation presented, there existed a 'realistic likelihood of vindictiveness' for the prosecutor's action." *Id.* (quoting *United States v. Andrews*, 633 F.2d 449, 453 (6th Cir. 1980)). Adams's claim that he was prosecuted in an effort to prevent him from pursuing a civil lawsuit against unnamed city officials is entirely speculative and conclusory because he acknowledges throughout his complaint and appellate brief that he was prosecuted and convicted because he failed to pay court-ordered child support.

Accordingly, we **DENY** the requests for oral argument and summary disposition and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS, Plaintiff, v. COUNTY OF CALHOUN, Defendant.	No. 1:16-CV-678 HONORABLE PAUL L. MALONEY

ORDER DENYING MOTION TO AMEND JUDGMENT

Plaintiff Barry Adams claimed that Calhoun County violated his right of "paternal dominion" under the Fourteenth Amendment and violated his rights under the Thirteenth Amendment and Anti-Peonage statute by incarcerating him for a "failure to pay."

The Court granted Calhoun County's motion to dismiss and entered judgment on March 15, 2018. (ECF Nos. 52–53.) The matter is now before the Court on Plaintiff's timely motion to alter the judgment under Federal Rule of Civil Procedure 59.

Motions to alter or amend judgment under Rule 59(e) may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 833-34 (6th Cir. 1999); *see also ACLU v. McCreary Cty.*, 607 F.3d 439, 450 (6th Cir. 2010). Further, under the Court's local rules, "motions for reconsideration that merely present the same issues ruled upon by the Court shall not be granted." W.D. Mich. LCivR 7.4(a). To prevail on such a motion, a movant must show "not only a palpable defect by which the Court and the parties have been misled, but also show that a different disposition of the case must result from correction thereof." *Id.*

The Court held that Plaintiff's claims were barred by the *Rooker-Feldman* doctrine. Plaintiff, in his seventeen-page filing, does not squarely address the Court's holding, let alone highlight any error that would allow the Court to grant his motion. Instead, Plaintiff continues to recycle the same block quotations for propositions of law that are not at issue here.

In short, Plaintiff has given the Court nothing to reconsider; he has not demonstrated a clear error of law, newly discovered evidence, a change in law, or that the granting the motion is required to prevent manifest injustice. Accordingly, the Court **DENIES** Plaintiff's motion (ECF No. 54).

IT IS SO ORDERED.

Date: July 2, 2018

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

Appendix D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,
Plaintiff,

v.

COUNTY OF CALHOUN,
Defendant.

No. 1:16-CV-678

HONORABLE PAUL L. MALONEY

ORDER ADOPTING R & R

Plaintiff Barry Adams claims that Calhoun County violated his right of "paternal dominion" under the Fourteenth Amendment and violated his rights under the Thirteenth Amendment and Anti-Peonage statute by incarcerating him for a "failure to pay." Calhoun County filed a motion to dismiss and Plaintiff filed a single document that the Court construes as a response to the motion to dismiss and as a motion for summary judgment.

On February 27, 2018, United States Magistrate Judge Ray Kent issued an R & R recommending that the complaint be dismissed for want of jurisdiction pursuant to the *Rooker-Feldman* doctrine. The matter is now before the Court on Plaintiff's objections to the R & R.

The Court is required to make a de novo determination of those portions of the R & R to which specific objections have been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). "[A] general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive

and contentious." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Simply disagreeing with a Magistrate Judge's conclusions or summarizing what was already presented is not an objection. *See Brown v. City of Grand Rapids*, 2017 WL 4712064 (6th Cir. 2017).

First, a brief recounting of the facts giving rise to Plaintiffs claims. In 2007, Plaintiff was convicted of failure to pay child support as required by a court order, in violation of MCL § 750.165, and sentenced to 25 to 96 months' imprisonment by the Calhoun County Circuit Court. Plaintiff was discharged from MDOC custody on February 28, 2015. Plaintiff's claims under the Thirteenth Amendment, Fourteenth Amendment, and 42 U.S.C. § 1994 arise from his conviction and incarceration under state law.

Plaintiffs objections are colorful, to say the least. At various points, he:

- Accuses Judge Kent of using "psycho-affective rhetorical sophistry" to "attempt to overwhelm the capacities of critical lay cognition . . . ." (ECF No. 50 at PageID.299.)
- Asserts that the R &R evidences "the lack of judicial temperament that is required to adjudicate a pro se litigants pleadings . . . ." (*Id.* at PageID.301.)
- Asserts that both Calhoun County and Judge Kent's "disturbing inabilities to accurately discern, or merely pretend to not discern, the nature of [his] clearly-presented claims is reflective of an underlying authoritariopathy . . . ."

The Court has thoroughly reviewed all of Plaintiff's objections and finds that only one merits brief mention because it addresses the dispositive issue—whether the *Rooker-Feldman* doctrine applies.

Construing Plaintiff's filing with all liberality, he asserts that 42 U.S.C. § 1994 (the Anti-Peonage statute) renders the judgments in his state court proceedings "a legal nullity." However, this statute renders void "the voluntary or involuntary service or labor of any persons, as peons, in liquidation of any debt or obligation . . . ." *Id.*

Plaintiff is not the first to attempt to use the Thirteenth Amendment and Anti-Peonage statute to challenge state-imposed child support or attempt to avoid the consequences of failing to pay the same. *See, e.g., Maley v. Kansas*, 2012 WL 12829188 (D. Kan. 2012); *State ex rel. Schmitz v. Knight*, 2006 WL 2126327 (Wash. App. 1st Div. 2006); *Lentz v. Alabama*, 2007 WL 2461915 (M.D. Ala. 2007); *Child Support Agency v. Doe*, 125 P.3d 461 (Haw. 2005); *McKenna v. Steen*, 422 So. 2d 615 (La. App. 1982) (finding allegations that child support order imposed on a law student amounted to an imposition of involuntary servitude by forcing him to continue in his previous occupation "so ludicrous that they hardly dignify a response"). Like those before him, Plaintiff's theory fails. There is no comparison between paying court-ordered child support and compulsory, involuntary servitude.

Accordingly, Plaintiff's claims are in fact barred by the *Rooker-Feldman* doctrine. "The pertinent question . . . is whether the 'source' of injury' upon which plaintiff bases his federal claim is the state court judgment." *In re Cook*, 551 F.3d 542, 548 (6th Cir. 2009). Because the source of Plaintiff seeks review of his conviction for failing to pay court-ordered child support, the source of his injury is clearly a state court judgment. *See, e.g., Rowe v. City of Detroit*, 2000 WL 1679474 (6th Cir. Nov. 2, 2000) (concluding that claims reflecting

dissatisfaction with state court child support orders were non-justiciable in federal court pursuant to *Rooker-Feldman*).

Thus, the R &R (ECF No. 49) is **ADOPTED** as the opinion of the Court.

Plaintiff's objections (ECF No. 50) to the R & R are **OVERRULED.**

Defendant Calhoun County's motion to dismiss (ECF No. 37) is **GRANTED** and Plaintiff's motion for summary judgment (ECF No. 43) is **DENIED.**

JUDGMENT TO FOLLOW.

IT IS SO ORDERED.

Date: March 15, 2018

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS, Plaintiff,	)	
	)	No. 1:16-CV-678
v.	)	
	)	HONORABLE PAUL L. MALONEY
COUNTY OF CALHOUN, Defendant.	)	

JUDGMENT

In accordance with the Order entered on this date (ECF No. 52), and pursuant to Federal Rule of Civil Procedure 58, **JUDGMENT** hereby enters.

IT IS SO ORDERED.

Date: March 15, 2018

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

Clerk of Court
By _____ Deputy Clerk
U.S. District Court
Western District of Michigan
Date 3/16/18

Appendix E

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,

Plaintiff,

v.

COUNTY OF CALHOUN et al.,

Defendants.
_____/

File No. 1:16-cv-678

HON. PAUL L. MALONEY

ORDER

Before the Court is Plaintiff's objection to the dismissal of his claims against Defendants State of Michigan and the Michigan Department of Corrections, and to the magistrate judge's order striking two of his filings as improvidently filed. This is the third time that Plaintiff has objected to these decisions. For the reasons stated in the Court's prior orders,

IT IS ORDERED that Plaintiff's objections (ECF No. 40) are **DENIED**.

Dated: May 4, 2017

/s/ Paul L. Maloney
PAUL L. MALONEY
UNITED STATES DISTRICT JUDGE

Appendix F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,

Plaintiff,

v.

COUNTY OF CALHOUN et al.,

Defendants.
_____/

File No. 1:16-cv-678

HON. PAUL L. MALONEY

ORDER

This is a civil rights action by an individual proceeding *pro se*. On March 3, 2017, United States Magistrate Judge Ray Kent struck two documents filed by Plaintiff for failure to follow the Court's local rules regarding the form and substance of dispositive motions (ECF No. 26). Plaintiff has filed an objection to this order (ECF No. 31), which the Court construes as an appeal to the district judge. Plaintiff has also filed an objection to the Court's March 24, 2017 order adopting the Report and Recommendation of the magistrate judge (ECF No. 33). The Court construes this objection as a motion for reconsideration. For the reasons that follow, Plaintiff's objections will be denied.

Appeal from Magistrate Judge's Order

The magistrate judge struck two documents filed by Plaintiff that he titled "notices" of request for relief. The magistrate judge noted that these documents contained "aspects of a motion, brief and declaration under penalty of perjury," but they did not follow the local rules, which require that a motion be accompanied by a brief containing a "'concise statement of the reasons in support of the party's position'" and citing "'all applicable federal rules of procedure, all applicable local

rules, and other authorities upon which the party relies.'" (Order, ECF No. 26 (quoting W.D. Mich. LCivR 7.1(a)).)

A magistrate judge's resolution of a non-dispositive pretrial matter should be modified or set aside on appeal only if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The magistrate judge's order was not clearly erroneous or contrary to law. The bulk of Plaintiff's documents are written in verbose legalese, with conclusory statements supported by citations to numerous rules and statutes and a long list of block quotes from legal sources that have little or no apparent bearing on the subject matter at hand. It is difficult to discern the issues in contention in Plaintiff's documents, let alone his position and the "concise statement of reasons" supporting it.

Moreover, to the extent that Plaintiff sought some form of relief, his requests were premature. When his notices were filed, the only two defendants that had been properly served with the complaint had filed motions to dismiss on grounds of immunity from suit. Those defendants have since been dismissed. The other defendants, Calhoun County and unidentified state actors, had not been properly served. Calhoun County has recently been served with the complaint, but it has not yet had an opportunity to respond to it. Plaintiff can renew any requests for relief against any remaining defendants by filing his requests in a proper form.

Motion for Reconsideration

Under Rule 54(b) of the Federal Rules of Civil Procedure, a non-final order is subject to reconsideration at any time before entry of a final judgment. *Id.*; *see also ACLU v. McCreary Cnty.*, 607 F.3d 439, 450 (6th Cir. 2010). Western District of Michigan Local Civil Rule 7.4(a) provides that "motions for reconsideration which merely present the same issues ruled upon by the Court shall

not be granted." Further, reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been misled . . . . [and] that a different disposition must result from a correction thereof." *Id.*

Plaintiff has not shown a palpable defect from which a different disposition must result. Plaintiff reiterates his arguments that the State of Michigan and the Michigan Department of Corrections are not immune from suit in federal court for his claims, but he cites no valid authority to support his position. He is correct that individual officials are subject to suit, but that has no bearing on whether he can sue the state itself. He claims that the Constitution abrogated state sovereign immunity through the Thirteenth Amendment and 18 U.S.C. § 1595, but he does not address the reasoning to the contrary that the Court cited in *Mojsilovic v. Oklahoma ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1133 (10th Cir. 2016) (noting that § 1585 was enacted through Congress' power under the Commerce Clause, not the Thirteenth Amendment; Congress does not have authority to abrogate state sovereign immunity under the Commerce Clause). In other words, while § 1595 creates a right to bring suit against an individual, it does not allow a suit against a state or its departments.

Plaintiff also objects to the Court's determination that he failed to properly serve Calhoun County in accordance with Rule 4(j)(2) of the Federal Rules of Civil Procedure. This objection is moot because Calhoun County has accepted service.

Accordingly,

IT IS ORDERED that Plaintiff's objections (ECF Nos. 31, 33) are **DENIED**.

Dated: April 11, 2017

/s/ Paul L. Maloney
PAUL L. MALONEY
UNITED STATES DISTRICT JUDGE

Appendix G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,

Plaintiff,

v.

File No. 1:16-cv-678

HON. PAUL L. MALONEY

COUNTY OF CALHOUN et al.,

Defendants.
_____/

ORDER

This is a civil rights action by an individual proceeding *pro se*. On March 3, 2017, United States Magistrate Judge Ray Kent issued a Report and Recommendation ("R&R"), recommending that the Court grant motions filed by Defendants County of Calhoun, the State of Michigan, and the Michigan Department of Corrections ("MDOC") (ECF No. 27). Plaintiff has filed objections to the R&R (ECF No. 28). For the reasons that follow, Plaintiff's objections will be denied and the R&R will be adopted as the opinion of the Court.

This Court is required to make a *de novo* review of those portions of a R&R to which specific objections are made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

A. Defendants State of Michigan and MDOC

The R&R recommends granting the motion for dismissal of Defendants State of Michigan and the MDOC because they are immune from suit in federal court. Plaintiff objects that he did not sue "Michigan"; rather, he sued "*de facto* corporate forms (COUNTY OF CALHOUN; STATE OF MICHIGAN;

MICHIGAN DEPARTMENT OF CORRECTIONS) who are not entitled to 'sovereign immunity[.]'" (Pl.'s objs., ECF No. 28, PageID.176.) However Plaintiff chooses to characterize them, the State of Michigan and the MDOC are defendants in this action and they are immune from suit in federal court. Thus, the Court discerns no error in the recommendation for their dismissal.

Plaintiff contends that the R&R acknowledged his claim under 42 U.S.C. § 1983, but did not acknowledge his claims under other statutes, including: 18 U.S.C. §§ 1582, 1593A, 1595; and 28 U.S.C. § 1651. Even if the R&R erred in overlooking these claims, this error does not change the result. 18 U.S.C. §§ 1582 and 1593A are criminal statutes. They are not enforceable by private citizens. A private citizen "lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Diamond v. Charles*, 476 U.S. 54, 64 (1986); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *Martin v. Koljonen*, No. 03-2169, 2004 WL 445720, at *1 (6th Cir. Mar. 9, 2004). Although 18 U.S.C. § 1595 provides a civil remedy to redress harm from a violation of these criminal statutes, Congress did not abrogate state sovereign immunity through § 1595. *Mojsilovic v. Oklahoma ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1134 (10th Cir. 2016). Consequently, Defendants State of Michigan and the MDOC are immune from suit for that claim as well. Finally, the All Writs Act, 28 U.S.C. § 1651, is not an independent source of jurisdiction for a court. It permits the issuance of writs in aid of the jurisdiction that the Court independently possesses. *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002); *Tropf v. Fidelity Nat. Title Ins., Co.*, 289 F.3d 929, 943 (6th Cir. 2002) (holding that federal courts must have an independent basis for subject matter jurisdiction in order to issue a writ under § 1651). Because the Court does not have independent jurisdiction over any claims against the State of Michigan and the MDOC, the All Writs Act does not apply.

B. Defendant Calhoun County

The R&R recommended treating Defendant Calhoun County's motion for dismissal under Rule 12(b)(5) as a motion to quash service. Plaintiff served the complaint on Calhoun County himself rather than using a third party, in violation of Rule 4(c) of the Federal Rules of Civil Procedure. The R&R recommends granting Plaintiff an additional 14 days to effect proper service.

Plaintiff acknowledges in his objections that he personally mailed the complaint and summons to Defendant, but he contends that it was the United States Postal Service that actually served the complaint. Even if service by an employee of the postal service complies with Rule 4(c), however, Plaintiff also failed to comply with Rule 4(j), which applies to service upon a state or local government. This Rule provides that a county must be served by "delivering a copy of the summons and of the complaint to its chief executive officer," or in a manner permitted by state law. Fed. R. Civ. P. 4(j)(2). State law permits service upon a county by personally serving "the chairperson of the county commission or the county clerk." Mich. Ct. R. 2.105(G)(1). Plaintiff has not complied with any of these rules. Thus, the Court agrees that service was improper.

Plaintiff contends, without support, that the Court should ignore the requirements of Rule 4 and deem the complaint to have been properly served because Defendant's attorney has filed an appearance and a motion to dismiss. A party may file a motion objecting to the sufficiency of service without waiving the service requirements. "A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery of the summons and complaint." 5B Wright & Miller Federal Practice and Procedure: Civil 3d § 1353 (2004). Defendant has filed such a motion and is entitled to a ruling on it.

Accordingly, for the reasons stated herein and in the R&R:

IT IS ORDERED that Plaintiff's objections to the R&R (ECF No. 28) are **DENIED.**

IT IS FURTHER ORDERED that the R&R (ECF No. 27) is **APPROVED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that the motion to dismiss filed by Defendants State of Michigan and the Michigan Department of Corrections (ECF No. 8) is **GRANTED**. Defendants State of Michigan and the Michigan Department of Corrections are **DISMISSED** from the case.

IT IS FURTHER ORDERED that the motion to dismiss filed by Defendant Calhoun County (ECF No. 10), construed as a motion to quash service, is **GRANTED**. The summons served on the County is **QUASHED**.

IT IS FURTHER ORDERED that the Clerk is directed to reissue a summons for Calhoun County. Plaintiff is given an extension of **14 days** to effect service on Calhoun County.

Dated: March 24, 2017

/s/ Paul L. Maloney
PAUL L. MALONEY
UNITED STATES DISTRICT JUDGE

Appendix H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,

Plaintiff, Case No. 1:16-cv-678

v. Hon. Paul L. Maloney

COUNTY OF CALHOUN, STATE OF MICHIGAN, and MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants.
_____/

REPORT AND RECOMMENDATION

This is a *pro-se* civil rights action brought pursuant to 42 U.S.C. § 1983 against defendants County of Calhoun ("County"), the State of Michigan ("Michigan"), and the Michigan Department of Corrections ("MDOC"). This matter is now before the Court on motions to dismiss filed by defendants Michigan and MDOC (docket no. 8) and the County (docket no. 10).

I. Plaintiff's amended complaint

In his amended complaint, plaintiff identifies himself as a "natural person" who is an "inhabitant of the republic of Michigan." Amend. Compl. (docket no. 5, PageID.65). Since 1996, plaintiff alleged that "certain agents and confederates" of defendants have conspired to deprive him of his "constitutionally-protected rights to the dominion, association, and consortium of his natural daughters." *Id.* at PageID.65. Specifically, on October 31, 2006, plaintiff was arrested "with malicious intent and under fraudulent pretenses" by agents of the County. *Id.* From March 7, 2007 to February 28, 2015, during his eight years of incarceration, Michigan and the MDOC "fraudulently

deprived [plaintiff] of his liberty (for a purported 'failure to pay' a fraudulently-assigned 'debt')". *Id.* at PageID.66.

Plaintiff appears to raise two constitutional claims. First, plaintiff alleged that defendants violated his "clearly-established Constitutional right" of paternal dominion under the Fourteenth Amendment. *Id.* at PageID.67-68, 70. Second, plaintiff alleged defendants violated his rights under the Thirteenth Amendment and the Anti-Peonage statute by incarcerating him for a "failure to pay." *Id.* at PageID.68, 70. Plaintiff seeks $2,500,000.00 in damages. *Id.* at PageID.70.

II. Defendants Michigan and MDOC's motion to dismiss (docket no. 8)

Defendants Michigan and MDOC have moved to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.[1] A complaint may be dismissed for failure to state a claim if it fails to give the defendants a fair notice of the claim and the grounds upon which it rests. *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007).

> [A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations and quotation marks omitted). In

[1] For reasons discussed in § III, *infra*, plaintiff's service of process on defendants Michigan and the MDOC were defective and the summonses could be quashed pursuant to Fed. R. Civ. P. 12(b)(5). However, because these two defendants have not objected to service and have voluntarily appeared in this action, the Court will not raise the service of process issue *sua sponte*.

making this determination, the complaint must be construed in the light most favorable to the plaintiff, and its well-pleaded facts must be accepted as true. *Morgan v. Churchs Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). However, while *pro se* pleadings are to be liberally construed, *see Williams*, 631 F.3d at 383, "this court is not required to conjure up unpled allegations." *Dietz v. Sanders*, 100 Fed. Appx. 334, 338 (6th Cir. 2004).

"To state a claim under 42 U.S.C. § 1983, a plaintiff must set forth facts that, when construed favorably, establish (1) the deprivation of a right secured by the Constitution or laws of the United States (2) caused by a person acting under the color of state law." *Sigley v. City of Parma Heights*, 437 F.3d 527, 533 (6th Cir. 2006). Defendants Michigan and MDOC contend that they are immune from suit under § 1983. The Court agrees. Regardless of the form of relief requested, the states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98-101 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *O'Hara v. Wigginton*, 24 F.3d 823, 826 (6th Cir. 1993). "This jurisdictional bar applies regardless of the nature of the relief sought." *Pennhurst*, 465 U.S. at 100. Congress has not expressly abrogated Eleventh Amendment immunity by statute, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), and the State of Michigan has not consented to civil rights suits in federal court. *Abick v. Michigan*, 803 F.2d 874, 977 (6th Cir. 1986). *See McCoy v. Michigan*, 369 Fed.Appx. 646, 653-54 (6th Cir. 2010) ("[b]ecause sovereign immunity extends to state instrumentalities, and the MDOC is an arm of the State of Michigan, the MDOC is entitled to sovereign immunity on the § 1983 claim) (internal quotation marks and citations omitted). Accordingly, Michigan and the MDOC's motion to dismiss (docket no. 8) should be granted.

III. The County's motion to dismiss (docket no. 10)

Defendant County has moved to dismiss the complaint on a number of grounds, including insufficient service of process pursuant to Fed. R. Civ. P. 12(b)(5). The Court's analysis begins and ends with the service of process issue, because the Court cannot grant relief to the County unless the County is a party to this litigation. "[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend." *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). "Unless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights." *Id.* at 350-51. As evidenced by its motion, the County has not waived service of process.

The plaintiff bears the burden of proving that proper service was effected. *Aetna Business Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir. 1981); *Frederick v. Hydro-Aluminum S.A.*, 153 F.R.D. 120, 123 (E.D. Mich.1994). *See LSJ Investment Company, Inc. v. O.L.D., Inc.*, 167 F.3d 320, 324 (6th Cir. 1999) ("actual knowledge and lack of prejudice cannot take the place of legally sufficient service"). In resolving a motion to dismiss for ineffective service under Fed. R. Civ. P. 12(b)(5), the court may construe such a motion as a motion to quash service. *See Young's Trading Company v. Fancy Import, Inc.*, 222 F.R.D. 341, 342-43 (W.D. Tenn. 2004) ("[w]here service is ineffective, a court has discretion to either dismiss the action or quash service and retain the case"). Indeed, the Sixth Circuit has expressed a preference to treat the first motion for improper service as a motion to quash. *See Stern v. Beer*, 200 F.2d 794, 795 (6th Cir. 1953) ("if the first service of process is ineffective, a motion to dismiss should not be granted,

but the case should be retained for proper service later"). *See also, Daley v. ALIA*, 105 F.R.D. 87, 89 (E.D. N.Y.1985) ("[w]hen the gravamen of defendant's motion is insufficiency of process, however, the motion must be treated as one to quash service, with leave to plaintiffs to attempt valid service"). Under the circumstances of this case, the Court views defendants' Rule 12(b)(5) motion as one to quash service of process rather than as one to dismiss the action. *See Stern*, 200 F.2d at 795.

B. Discussion

"The plaintiff generally bears responsibility for appointing an appropriate person to serve a copy of his complaint and the summons upon a defendant." *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996). Here, the proof of service for Calhoun County was executed by plaintiff "Barry Wayne Adams" and signed by "Barry Wayne Adams All Rights Reserved" of 622 West Green Street, Marshall, Michigan. *See* Proof of Service (docket no. 7, PageID.78); Affidavit (docket no. 7-1). Plaintiff also charged himself $100.00 for attempting to serve the complaint via certified mail. Proof of Service at PageID.78. Based on this record, plaintiff improperly attempted to serve the summons without engaging a third-party process server as required by Fed. R. Civ. P. 4(c)(2), which states that "[a]ny person who is at least 18 years old **and not a party** may serve a summons and complaint" (emphasis added). "Rule 4(c) expressly and clearly prohibits a plaintiff from effectuating service on a defendant." *Reading v. United States*, 506 F. Supp. 2d 13, 19 (D.D.C. 2007).

Accordingly, defendant County's motion to dismiss should be granted as to the improperly served summons. Pursuant to *Stern*, 200 F.2d at 795, the summons served on the County should be quashed plaintiff should be directed to properly serve the County. In this regard, the Clerk's Office should be directed to re-issue a summons for the County and plaintiff be given a 14

day extension to serve the County as required under the court rules.

IV. RECOMMENDATION

For these reasons, I respectfully recommend that defendants State of Michigan and MDOC's motion to dismiss (docket no. 8) be **GRANTED** and that they be **DISMISSED** from this case.

I further recommend that defendant Calhoun County's motion to dismiss (docket no. 10) be **GRANTED** and that the summons served on the County be **QUASHED**.

I further recommend that a summons be re-issued to the County and that plaintiff be given an extension of **14 days** to effect service.

Dated: March 3, 2017

/s/ Ray Kent
RAY KENT
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within fourteen (14) days after service of the report. All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARRY WAYNE ADAMS,

Plaintiff,

Case No. 1:16-cv-678

v.

Hon. Paul L. Maloney

COUNTY OF CALHOUN,
STATE OF MICHIGAN, and
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.
_____/

ORDER

Plaintiff has filed two papers in this Court entitled "Notice of Request for Summary Disposition by Affidavit" (docket no. 14) and "Notice of Request for Injunctive and Other Relief by Affidavit" (docket no. 17). Both of these "Notices" purport to be affidavits and incorporate aspects of a motion, brief and declaration under penalty of perjury. While these notices have been docketed as motions, they are not motions in either form or substance. With respect to form, motions filed in this Court must be accompanied by a supporting brief, which "shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of procedure, all applicable local rules, and the other authorities upon which the party relies." W.D. Mich. LCivR 7.1(a). A *pro se* litigant such as plaintiff is required to follow the rules of civil procedure and easily-understood court deadlines. *Mooney v. Cleveland Clinic Foundation*, 184 F.R.D. 588, 590 (N.D. Ohio 1999). With respect to substance, plaintiff's notices include rambling recitations of legalese seasoned with a liberal dose of tax protester-style jargon and seek relief

unrelated to the allegations in this lawsuit, such as writing letters of apology and prohibiting the enforcement of municipal ordinances against plaintiff's property. By filing this lawsuit without an attorney, plaintiff voluntarily "assumes the risks and accepts the hazards which accompany self-representation." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 561 (6th Cir. 2000). These risks and hazards include having improperly filed papers stricken by the Court.

Accordingly, these "Notices" (docket nos. 14 and 17) are **STRICKEN** as improvidently filed. *See Dietz v. Bouldin*, -- U.S. --, 136 S. Ct. 1885, 1892 (2016) ("district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases"); Fed. R. Civ. P. 1 (the court rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding").

IT IS SO ORDERED.

Dated: March 3, 2017

/s/ Ray Kent
RAY KENT
United States Magistrate Judge

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