

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 09, 2020

Clerk - Northern District of Georgia
U.S. District Court
121 SPRING ST SE
STE 201
GAINESVILLE, GA 30501

Appeal Number: 19-12881-CC
Case Style: Brandon Williams v. State of Georgia Office, et al
District Court Docket No: 2:19-cv-00086-RWS

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC
Phone #: (404) 335-6179

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12881-CC

BRANDON WILLIAMS,

Plaintiff - Appellant,

versus

STATE OF GEORGIA OFFICE OF THE GOVERNOR,
ROBERT D. ALEXANDER,

Defendants - Appellees.

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Brandon Williams has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective January 09, 2020.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Carol R. Lewis, CC, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12881-CC

BRANDON WILLIAMS,

Plaintiff-Appellant,

versus

**STATE OF GEORGIA OFFICE OF THE GOVERNOR,
ROBERT D. ALEXANDER,**

Defendants-Appellees.

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

ORDER:

Appellant's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

App. 1a
(Exhibit B)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 10, 2019

Brandon Williams
PO BOX 791481
CHARLOTTE, NC 28206

Appeal Number: 19-12881-CC
Case Style: Brandon Williams v. State of Georgia Office, et al
District Court Docket No: 2:19-cv-00086-RWS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC
Phone #: (404) 335-6179

MOT-2 Notice of Court Action

App. 1b
(Exhibit I)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12881-CC

BRANDON WILLIAMS,

Plaintiff-Appellant,

versus

STATE OF GEORGIA OFFICE OF THE GOVERNOR,
ROBERT D. ALEXANDER,

Defendants-Appellees.

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

Before: WILLIAM PRYOR AND ROSENBAUM, Circuit Judges.

BY THE COURT:

Brandon Williams has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated October 28, 2019, denying his motion for leave to proceed *in forma pauperis* in the appeal of the denial of his civil rights complaint, 42 U.S.C. § 1983. Because Williams has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

App. 1C
(Exhibit E)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 26, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-12881-CC

Case Style: Brandon Williams v. State of Georgia Office, et al

District Court Docket No: 2:19-cv-00086-RWS

I am returning to you unfiled the papers which you have submitted.

Motion for permission to Appeal In Forma Pauperis and Affidavit filed by Brandon Williams is returned unfiled because a party may file only one motion for reconsideration with respect to the same order (See 11th Cir.R.27-3). Enclosed is a second copy of this court's orders denying your motion to proceed in forma pauperis and motion for reconsideration.

Sincerely,

DAVID J. SMITH, Clerk of Court

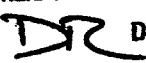
Reply to: Carol R. Lewis, CC
Phone #: (404) 335-6179

PRO-3 Letter Returning Papers Unfiled

App. 1d
(Exhibit J)

FILED IN CLERK'S OFFICE
U.S.D.C. - Gainesville

JUL 15 2019

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

BRANDON WILLIAMS,

Plaintiff,

v.

STATE OF GEORGIA OFFICE OF
THE GOVERNOR, and
ROBERT D. ALEXANDER,

Defendants.

CIVIL ACTION NO.
2:19-CV-00086-RWS

ORDER

On May 13, 2019, Magistrate Judge J. Clay Fuller entered an Order [2] permitting Plaintiff to proceed *in forma pauperis* in this action. It is now before the Court for a frivolity determination. After reviewing the record, the Court enters the following Order.

Discussion

Plaintiff has filed a Complaint of Criminal Activity for a Civil Case [3] ("Complaint") against the State of Georgia and Robert D. Alexander, a Jackson County State Court Judge, for alleged conspiracy against rights (18 U.S.C. § 241),

App. 20b
(Exhibit K)

deprivation of rights under color of law (18 U.S.C. § 242¹), conspiracy to interfere with civil rights (42 U.S.C. § 1985), neglect to prevent (42 U.S.C. § 1986), and violations of Plaintiff's Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983. The allegations in Plaintiff's Complaint are difficult to decipher, but his claims appear to stem from a traffic incident that occurred in Georgia and resulted in his arrest, detention in Banks County and Franklin County jails, and order to appear before Judge Alexander.

Under 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." A claim is frivolous when it appears from the face of the complaint that the factual allegations are "clearly baseless" or that the legal theories are "indisputably meritless."

Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carrol v. Gross, 984 F.2d 393, 393

¹ Plaintiff cites to 42 U.S.C. § 242, however, the correct citation for the criminal statute concerning deprivation of rights under color of law is 18 U.S.C. § 242. That said, 18 U.S.C. §§ 241-42 are inapplicable in this suit because they are criminal statutes that do not provide for private causes of action. See Paletti v. Yellow Jacket Marina, Inc., 395 Fed. App'x 549, 549 n.3 (11th Cir. 2010) (18 U.S.C. § 241 does not provide a private right of action); Moni v. Volusia County, 717 F. App'x 976, 977 (11th Cir. 2018) (per curiam) (holding that there is no private right of action under 18 U.S.C. § 242).

(11th Cir. 1993). A claim is also frivolous where the defendants are immune from suit or the claim seeks to enforce a right that clearly does not exist. Neitzke, 490 U.S. at 327.

After reviewing Plaintiff's Complaint, the Court finds it is due to be dismissed as frivolous because both Defendants are immune from suit. Thus, the Court will not elaborate on the many merits-based deficiencies in Plaintiff's Complaint. Instead, the Court will briefly elaborate on each immunity in turn.

I. The State of Georgia

The Eleventh Amendment to the United States Constitution provides that “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The Supreme Court has held that the Eleventh Amendment bars suits for money damages against a state or one of its agencies by any citizen unless the State consents to suit or has waived its Eleventh Amendment immunity. Edelman v. Jordan, 415 U.S. 651 (1974); Penhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984). Congress may waive or abrogate the States' Eleventh Amendment immunity pursuant to the “exercise of its enforcement authority under § 5 of the Fourteenth Amendment.” Dellmuth v. Muth, 491 U.S. 223, 226 (1989) (citing

Fitzpatrick v. Bitzer, 427 U.S. 445, 453 (1976); see also Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) (only §5 of the Fourteenth Amendment may be used to abrogate States' sovereign immunity).

There has been no waiver of immunity in these circumstances. There must be an "unequivocal indication that the State intends to consent to federal jurisdiction that otherwise would be barred by the Eleventh Amendment."

Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n. 1 (1985). The Georgia Constitution provides, "[n]o waiver of sovereign immunity... shall be construed as a waiver of any immunity provided to the state or its departments, agencies, officers, or employees by the United States Constitution." GA. CONST. Art. 1, § 2, ¶ 9(f). The state of Georgia has not waived Eleventh Amendment immunity from suits in federal court. While permission has been granted for an individual to maintain a civil action against it in limited circumstances, none of these circumstances applies in this case. See O.C.G.A. § 50-21-21 (waiving Eleventh Amendment immunity in some circumstances). Accordingly, any claims for damages against the state must be dismissed because the Eleventh Amendment protects the State of Georgia from these types of claims.

II. Judge Robert D. Alexander

Judicial officers are similarly immune from civil lawsuits if they were acting in their judicial capacity. Mireles v. Waco, 502 U.S. 9, 9 (1991). “Whether a judge’s actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge’s chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity.” Id.

Here, Judge Alexander is a state court judge in Jackson County, Georgia. Plaintiff’s allegations against Judge Alexander appear to be that the Judge ordered him to appear before the court and that Judge Alexander did not use his judicial powers to prevent injury to Plaintiff. Both alleged actions stem directly from conduct that occurred while he was acting within his judicial capacity. As evidenced by Plaintiff’s attached Exhibit 18, Plaintiff’s criminal case is currently before Judge Alexander in Jackson County.² (Pl.’s Compl., Dkt. [3] at 9, Exhibit 18. Thus, any decisions Judge Alexander makes in presiding over this case are entitled to absolute immunity, even if his “acts are in error, malicious, or were in

² The Court takes judicial notice of the Jackson County public records submitted in Plaintiff’s Complaint as Exhibit 18. See e.g., Universal Express, Inc. v. U.S. S.E.C., 177 Fed. Appx. 52, 53 (11th Cir. 2006) (“Public records are among the permissible facts that a district court may consider” at the motion to dismiss stage.).

excess of his or her jurisdiction." Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir.2005).

Plaintiff's arguments that Judge Alexander lacks jurisdiction over his case because the case has been removed to federal court and that Judge Alexander vacated judicial immunity by failing to comply with O.C.G.A. § 15-6-6 similarly lack merit. First, Plaintiff's case before Judge Anderson is a criminal case while the present case is civil. Filing a new civil case in federal court does not automatically remove a pending criminal case in state court. Further, a state criminal prosecution may be removed to federal court on civil rights grounds under very limited circumstances, none of which applies here. See 28 U.S.C. § 1443. Second, O.C.G.A § 15-6-6 does not apply to Judge Anderson because he is a *state* court judge, while the statute governs *superior* court judges. Therefore, it appears from Plaintiff's Complaint that Judge Anderson has jurisdiction over Plaintiff's criminal case and is entitled to absolute judicial immunity. As a result, all claims against him should be dismissed.

Conclusion

For the foregoing reasons, the Court concludes that the claims asserted by Plaintiff are frivolous. This case is hereby **DISMISSED** and the Clerk is **DIRECTED** to close this action.

6
App. 20b
(Exhibit K)

SO ORDERED this 15th day of July, 2019.


RICHARD W. STORY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

BRANDON WILLIAMS, :
: Plaintiff, :
: :
v. : : CIVIL ACTION NO.:
: : 2:19-CV-00002-RWS
STATE OF GEORGIA, et al., :
: Defendants. :
:

ORDER

Plaintiff seeks to proceed in this Court without prepayment of fees or security pursuant to 28 U.S.C. § 1915(a). After consideration of Plaintiff's affidavit in support of his Application To Proceed Without Prepaying Fees Or Costs (Doc. 1), Plaintiff's request to proceed *in forma pauperis* is hereby **GRANTED**. The Clerk is directed to submit this action to the District Judge for review of Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED this 9th day of January, 2019.

/s/ J. Clay Fuller
J. Clay Fuller
United States Magistrate Judge

App. 1e
(Exhibit L)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

BRANDON WILLIAMS, :
: :
Plaintiff, :
: :
v. : CIVIL ACTION NO.:
: 2:19-CV-00086-RWS
STATE OF GEORGIA OFFICE OF :
THE GOVERNOR and ROBERT :
ALEXANDER, :
: :
Defendants. :
:

ORDER

Plaintiff seeks to proceed in this Court without prepayment of fees or security pursuant to 28 U.S.C. § 1915(a). After consideration of Plaintiff's affidavit in support of his Application To Proceed Without Prepaying Fees Or Costs (Doc. 1), Plaintiff's request to proceed *in forma pauperis* is hereby **GRANTED**. The Clerk is directed to submit this action to the District Judge for review of Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED this 13th day of May, 2019.

/s/ J. Clay Fuller
J. Clay Fuller
United States Magistrate Judge

App. 1e
(Exhibit L)

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