

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

No: 19-3488

Johnathan Pinney

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction (originally named as State of Arkansas)

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:19-cv-00679-BRW)

JUDGMENT

Before COLLTON, ERICKSON, and KOBES, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.

February 27, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:19-cv-00679-BRW)

ORDER

The petition for rehearing by the panel is denied.

April 07, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**JOHNATHAN PINNEY
ADC #173141**

PETITIONER

CASE NO. 4:19-CV-679-BRW-BD

**DEXTER PAYNE, Director,
Arkansas Department of Correction**

RESPONDENT

ORDER

On September 27, 2019, Petitioner Jonathan Pinney filed a *pro se* petition for writ of habeas corpus. (Docket entry #2) Respondent Payne timely responded and argued that the petition should be dismissed based on Mr. Pinney's alleged failure to exhaust his state-court remedies. Director Payne attached to his response Mr. Pinney's sentencing order (#10-1), his notice of appeal to the Arkansas Court of Appeals (#10-2), and the trial court's order extending the time for filing the transcript of record to November 1, 2019. (#10-3)

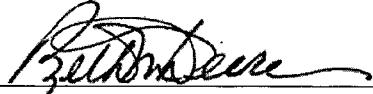
Rather than dismiss the petition, the Court will stay the federal petition to allow Mr. Pinney an opportunity to exhaust his state remedies. A stay will allow Mr. Pinney to raise his federal constitutional claims in Arkansas's courts without running afoul of the federal one-year statute of limitations for filing a federal petition. A stay-and-abeyance is appropriate in this circumstance. See *Pace v. DiGuglielmo*, 544 U.S. 408, 416-17 (2005) (where a petitioner has good cause for confusion about state filings, has presented potentially meritorious claims, and has not engaged in intentionally dilatory tactics, a district court should stay rather than dismiss petition). A stay is the appropriate course

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here, even though it appears that Mr. Pinney has presented only unexhausted claims. See *Heleva v. Brooks*, 581 F.3d 187, 191 (3d Cir. 2009) (noting that the Supreme Court in *Pace* sanctioned the use of the stay-and-abeyance procedure in a context outside that of mixed petitions).

Accordingly, Mr. Pinney's petition (#2) is STAYED and his pending motion for summary judgment (#9) is DENIED as moot. The Clerk of Court is directed to administratively terminate this case. Mr. Pinney will have 30 days from the conclusion of his state proceedings to file a motion to reopen this case. After the case is reopened, both parties will have the opportunity to amend their pleadings.

IT IS SO ORDERED, this 5th day of November, 2019.



UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHNATHAN PINNEY
#173141

PLAINTIFF

v. No. 4:19-cv-138-DPM

CHRIS WARING, Lieutenant,
Fairfield Bay Police Department;
CHAD BROWN, State's Attorney;
FOSTER, Van Buren County Judiciary;
MARK RODDENBERRY, Sergeant,
Fairfield Bay Police Department;
DALLAS CLARK, Code Enforcement
Officer, Fairfield Bay; LUCAS
EMBERTON, Sheriff, Van Buren County;
and CATHY HERSMAN, Fairfield
Bay Community Club

DEFENDANTS

ORDER

1. Pinney's motion for a writ of *habeas corpus*, № 44, is denied. Pinney can't get *habeas* relief in this § 1983 lawsuit; he must file a separate *habeas corpus* action if he wants to challenge his incarceration. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

2. This case is stayed pending the final disposition of Pinney's state criminal case. Pinney's embedded motion to consolidate his cases, № 44 at 2, is therefore denied without prejudice. This case must remain on hold.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

5 August 2019

FILED

FEB 28 2020

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Johnathan Pinney,)
)
Plaintiff,)
)
v.) Civil Action No. 19-3842 (UNA)
)
United States Supreme Court *et al.*,)
)
Defendants.)

MEMORANDUM OPINION

This matter, brought *pro se* by an Arkansas state prisoner, was transferred from the United States District Court for the District of Arkansas. It is before this Court on review of plaintiff's motion for leave to proceed *in forma pauperis* (IFP) and his complaint. The IFP application will be granted, and this case will be dismissed.

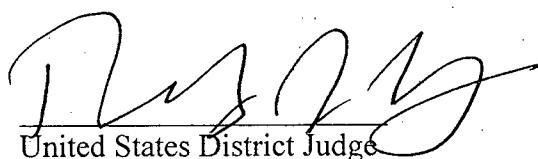
A district court must immediately dismiss a prisoner's complaint upon determining that it, among other enumerated grounds, fails to state a claim upon which relief can be granted or is brought against an immune defendant. 28 U.S.C. § 1915A. Plaintiff has sued the United States Supreme Court and its Clerk of Court for returning his submission unfiled. *See Compl. Attachment [Dkt. # 2, ECF p. 43]. He seeks injunctive relief and "redress of gross injuries."* Compl. at 4.

The Supreme Court "has inherent [and exclusive] supervisory authority over its Clerk." *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam). Therefore, "a lower court may [not] compel the Clerk of the Supreme Court to take any action." *Id.*; *see Panko v. Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979), *cert. denied*, 444 U.S. 1081 (1980) ("It seems axiomatic that a

lower court may not order the judges or officers of a higher court to take an action.”). Nor can a lower court “review orders of the Supreme Court or direct the Court to take any action.” *In re Lewis*, No. 99-5015, 1999 WL 150347, at *1 (D.C. Cir. Feb. 26, 1999) (citing *In re Marin*, 956 F.2d at 340) (other citation omitted)); *see accord Caprice v. United States*, No. 11-cv-0535, 2011 WL 902128, at *1 (D.D.C. Mar. 14, 2011) (noting that this district court “has no authority to determine what action, if any, must be taken by the Justices of the Supreme Court and the Supreme Court’s administrative officers with respect to plaintiff’s petition” for a writ of certiorari).

In addition, “the Supreme Court Clerk and Clerk’s office staff enjoy absolute immunity from a lawsuit for money damages based upon decisions [such as alleged here] falling within the scope of their official duties.” *Miller v. Harris*, 599 Fed. App’x 1 (D.C. Cir. 2015) (per curiam) (citing *Sindram v. Suda*, 986 F.2d 1459 (D.C. Cir. 1993) (per curiam)); *see Reddy v. O’Connor*, 520 F. Supp. 2d 124, 130 (D.D.C. 2007) (actions consisting of the denial of a petition for a writ of certiorari and the Deputy Clerk’s refusal to file documents concerning a subsequent petition “are quintessentially ‘judicial’ in nature because they are ‘an integral part of the judicial process’”) (quoting *Sindram*, 986 F.2d at 1460-61). Therefore, this case will be dismissed with prejudice. *See Fletcher v. Harris*, 790 Fed. App’x 220 (D.C. Cir. 2020) (“The district court correctly denied appellant’s motion for injunction and dismissed the case with prejudice, because appellant’s claim for money damages against the Clerk of the Supreme Court was barred by absolute immunity.”). A separate order accompanies this Memorandum Opinion.

Date: February 25, 2020



United States District Judge

FILED

FEB 28 2020

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Johnathan Pinney,)
Plaintiff,)
v.) Civil Action No. 19-3842 (UNA)
United States Supreme Court *et al.*,)
Defendants.)

ORDER

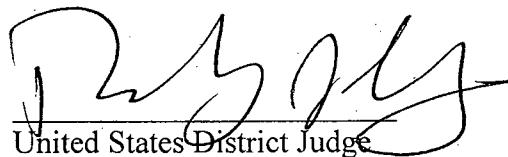
For the reasons stated in the accompanying Memorandum Opinion, it is

ORDERED that plaintiff's application to proceed *in forma pauperis* [Dkt. # 1] is

GRANTED; and it is

FURTHER ORDERED that this case is **DISMISSED** with prejudice.

This is a final appealable Order.



United States District Judge

Date: February 25, 2020