

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1064

BRANDON WILLIAMS,

~~Plaintiff-Appellant,~~

v.

STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR;
COMMISSIONER DEPARTMENT OF MOTOR VEHICLES,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. James C. Dever III, District Judge. (5:19-cv-00253-D)

Submitted: March 12, 2020

Decided: March 17, 2020

Before KING, KEENAN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Brandon Williams, Appellant Pro Se. Neil Clark Dalton, NORTH CAROLINA
DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

App. A

PER CURIAM:

Brandon Williams filed a notice of appeal in the district court, where his civil action was pending. Appellees have moved to dismiss the appeal for lack of jurisdiction, and Williams has responded with a motion for judgment as a matter of law.

Williams failed to identify the order from which he seeks to appeal, in violation of Fed. R. App. P. 3(c)(1)(B). When Williams filed his notice of appeal, the only order on the docket was the order referring his motion for leave to proceed in forma pauperis to the magistrate judge. If Williams is seeking to appeal that order or the Clerk's letter advising him to respond to the motion to dismiss, the appeal is interlocutory, and we lack jurisdiction. *See* 28 U.S.C. §§ 1291, 1292 (2018); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). Otherwise, we lack jurisdiction because there was no other order from which Williams could have appealed.

Accordingly, we deny Williams' motion for judgment as a matter of law, grant Appellees' motion to dismiss, and dismiss the appeal for lack of jurisdiction. 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.

DISMISSED

App. A

FILED: March 17, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1064
(5:19-cv-00253-D)

BRANDON WILLIAMS

Plaintiff - Appellant

v.

STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR;
COMMISSIONER DEPARTMENT OF MOTOR VEHICLES

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

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

App. B

FILED: January 23, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1064
(5:19-cv-00253-D)

BRANDON WILLIAMS

Plaintiff - Appellant

v.

STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR;
COMMISSIONER DEPARTMENT OF MOTOR VEHICLES

Defendants - Appellees

ORDER

The court grants leave to proceed in forma pauperis.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

App.C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-253-D

BRANDON WILLIAMS,

Plaintiff,

v.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR, and
COMMISSIONER DEPARTMENT
OF MOTOR VEHICLES,

Defendants.

ORDER

On June 9, 2019, Brandon Williams ("Williams" or "plaintiff"), appearing pro se, applied to proceed in forma pauperis under 28 U.S.C. § 1915 [D.E. 1]. On June 26, 2019, the court referred the motion to Magistrate Judge Swank for frivolity review [D.E. 2]. Williams then filed petitions for judgment [D.E. 5, 6, 7, 8]. On October 14, 2019, defendant Commissioner Department of Motor Vehicles filed a motion to dismiss and supporting memorandum [D.E. 12, 13]. On October 23, 2019, and October 25, 2019, Williams filed responses to the motion to dismiss [D.E. 15, 16]. On November 6, 2019, Williams filed a notice of violation of Rule 12(a)(2) and an affidavit [D.E. 17, 18]. On December 12, 2019, Williams filed a notice of appeal for violation of Rule 12(a)(2) [D.E. 19]. On January 23, 2020, Magistrate Judge Swank issued a Memorandum and Recommendation ("M&R") and recommended this court grant Williams's application to proceed in forma pauperis and dismiss Williams's complaint for failure to state a claim [D.E. 23]. Williams did not object to the M&R.

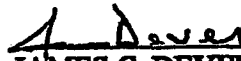
App. D

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b)(1). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R and the record. The court is satisfied that there is no clear error on the face of the record. Accordingly, the court adopts the conclusions in the M&R [D.E. 23].

In sum, Williams's application to proceed in forma pauperis [D.E. 1] is GRANTED, and Williams's complaint and other motions [D.E. 5, 6, 7, 8, 12] are DISMISSED.

SO ORDERED. This 12 day of February 2020.


JAMES C. DEVER III
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-253-D

BRANDON WILLIAMS,

Plaintiff,

v.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR, and
COMMISSIONER DEPARTMENT OF
MOTOR VEHICLES,

Defendants.

ORDER and
MEMORANDUM &
RECOMMENDATION

This pro se case is before the court on the application [DE #1] by Plaintiff Brandon Williams to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B), the matter having been referred to the undersigned by the Honorable James C. Dever III, United States District Judge. For the reasons set forth below, Plaintiff's application to proceed *in forma pauperis* is allowed, the motions filed by the parties are stricken, and it is recommended that Plaintiff's claims against Defendants be dismissed.

IFP MOTION

The standard for determining *in forma pauperis* status is whether "one cannot because of his poverty pay or give security for the costs . . . and still be able to provide himself and dependents with the necessities of life." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). Based on the information contained in

Plaintiff's affidavit, the court finds that Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs. Thus, Plaintiff's application to proceed *in forma pauperis* is ALLOWED.

DISCUSSION

I. Background

Plaintiff seeks to sue the State of North Carolina, Office of the Governor, and the Commissioner of the North Carolina Division of Motor Vehicles under 42 U.S.C. §§ 1983, 1985, and 1986. (*Id.* at 2, 10.) Plaintiff also cites to 18 U.S.C. § 241 (Conspiracy against rights) and 42 U.S.C. § 242¹ (*id.* at 2), which the court construes as a citation to 18 U.S.C. § 242 (Deprivation of rights under color of law).²

Plaintiff alleges he was "arrested, imprisoned, brutalized by the police, taken from his home to Mecklenburg County Jail and was made to pay excessive bail" without a warrant or *Miranda* warnings. (Prop. Compl. at 2–3.) Plaintiff appeared before North Carolina state judges in Mecklenburg and Cabarrus Counties and asserts his "constitutionally protected rights were violated" in court proceedings. (*Id.* at 4.) Plaintiff alleges he was also stopped in warrantless traffic stops with no probable cause. (*Id.* at 6.) Plaintiff seeks to sue the Commissioner of the North

¹ 42 U.S.C. § 242 concerns studies and investigations conducted by the Secretary for the Department of Health and Human Services on the use and misuse of narcotic drugs and other drugs.

² 18 U.S.C. §§ 241 and 242 are "criminal statutes and do not provide a civil remedy." *Yagoda v. Davis*, No. 7:11-CV-122-BO, 2011 WL 3911111, at 1* (E.D.N.C. Sept. 5, 2011).

Carolina Division of Motor Vehicles over the suspension of his driver's license for failure to appear in Guilford County and failure to pay a fine in Cabarrus County. Plaintiff asserts the "Commissioner is acting as a debt collector for both counties." (*Id.* at 8.) Plaintiff requests compensatory damages of \$20,000,000 and "other just compensation the Court deems fair and reasonable under the circumstances." (*Id.* at 11.)

II. Motions & Notice of Appeal

Since the filing of his application to proceed *in forma pauperis*, Plaintiff has submitted various filings [DE ## 5, 6, 7, 8, 9, 10, 17, 18, 19], including motions to enjoin criminal proceedings instituted against him in Guilford and Cabarrus Counties.

On October 14, 2019, Defendant Commissioner filed a Motion to Dismiss [DE #12] to which Plaintiff responded in opposition on October 23, 2019 [DE #15].

The motions filed by Plaintiff and Defendant are premature as they were filed prior to the court's determination of Plaintiff's application to proceed *in forma pauperis* and frivolity review under 28 U.S.C. § 1915. Accordingly, these filings should be stricken.

On January 13, 2020, Plaintiff also filed a notice purporting to appeal to the Fourth Circuit from a judgment or order entered in this action on January 10, 2020. "Ordinarily, 'a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance'" and generally divests the district court of

jurisdiction over those matters involved in the appeal. 16A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 3949.1 (5th ed.). Here, however, there was no judgment or order entered on January 10, 2020, and Plaintiff's notice of appeal therefore has no effect on the court's authority to act in this matter.

III. Standard for Frivolity Review

Notwithstanding the determination that Plaintiff is entitled to *in forma pauperis* status, the court is required to dismiss all or part of an action found to be frivolous or malicious, which fails to state a claim on which relief can be granted, or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2); *Michau v. Charleston County*, 434 F.3d 725, 728 (4th Cir. 2006). A case is frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Pro se complaints are entitled to a more liberal treatment than pleadings drafted by lawyers. *See White v. White*, 886 F.2d 721, 722–23 (4th Cir. 1989). However, the court is not required to accept a pro se plaintiff's contentions as true. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). The court is permitted to “pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327.

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to give a “short plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8. The statement must give a defendant fair notice of what the claim is and the grounds upon which it rests. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “A plaintiff must offer more detail . . . than the bald statement that he has a

valid claim of the type against the defendant." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (see also *White*, 886 F.2d at 723 (affirming district court's dismissal of plaintiff's complaint as frivolous where plaintiff's complaint "failed to contain any factual allegations tending to support his bare assertion"). While the court must read the complaint carefully to determine if the plaintiff has alleged facts sufficient to support his claims, *White*, 886 F.2d at 724, the court is not required to act as the pro se plaintiff's advocate or to parse through volumes of documents or discursive arguments in an attempt to discern the plaintiff's unexpressed intent, *Williams v. Ozmint*, 716 F.3d 801, 805 (4th Cir. 2013).

IV. Eleventh Amendment Immunity

The Eleventh Amendment provides a state and its agents and instrumentalities immunity from suits brought by citizens of the state. *Regents of the Univ. of California v. Doe*, 519 U.S. 425, 429 (1997); see U.S. CONST. amend. XI ("The 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."). "Under the Eleventh Amendment, . . . neither a State nor its officials in their official capacity may be sued for damages in federal court without their consent." *Gamache v. Cavanaugh*, 82 F.3d 410, 1996 WL 174623, at *1 (4th Cir. 1996).

Plaintiff's proposed complaint names as defendants the State of North Carolina, Office of the Governor, and the Commissioner of the North Carolina Department of Motor Vehicles. Both defendants are entitled to Eleventh Amendment

immunity. Therefore, Plaintiff may pursue his claims only if “(1) the state has clearly and unambiguously waived sovereign immunity; (2) the case fits within the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which permits certain private suits against state officers; or (3) Congress has validly abrogated the immunity.” *Teague v. N. Carolina Dep’t of Transp.*, No. 5:07-CV-45-F, 2007 WL 2898707, at *2 (E.D.N.C. Sept. 28, 2007).

Plaintiff has not included any allegations from which it may be inferred that the State of North Carolina has waived its immunity with respect to the claims Plaintiff alleges. Nor does Plaintiff invoke a federal statute that abrogates the state’s sovereign immunity. *See, e.g., Quern v. Jordan*, 440 U.S. 332, 345 (1979) (concluding that § 1983 does not abrogate sovereign immunity); 15 U.S.C. § 1692a(6)(C) (exempting from coverage under the Fair Debt Collection Practices Act “any officer or employee of . . . any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.”). Moreover, Plaintiff is not seeking prospective relief against a state official so as to fall within the *Ex parte Young* exception. As such, Plaintiff’s claims are barred by the Eleventh Amendment.


CONCLUSION

For the reasons stated above, Plaintiff’s application to proceed *in forma pauperis* is ALLOWED, the motions filed by Plaintiff and the Commissioner are hereby STRICKEN, and it is RECOMMENDED that Plaintiff’s claims against Defendants be DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on the parties or their counsel of record. Each party shall have until **February 10, 2020**, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.*, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If you do not file written objections to the Memorandum and Recommendation by the foregoing deadline, you will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, your failure to file written objections by the foregoing deadline may bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. *See Wright v. Collins*, 766 F.2d 841, 846–47 (4th Cir. 1985).

This 23rd day of January 2020.


KIMBERLY A. SWANK
United States Magistrate Judge

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18 U.S.C. §§ 1001 Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully:

1. Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
2. Makes any materially false, fictitious, or fraudulent statement or representation; or
3. Makes or uses any false writings or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism, imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate [United States magistrate judge] in that proceeding.

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