

APPENDIX A

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:19-cv-09266-CM

Smith v. New York State Child Support Process Center et al
Assigned to: Judge Colleen McMahon
Cause: 42:1983 Civil Rights Act

Date Filed: 10/07/2019
Date Terminated: 11/25/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

Ronnie Smith

represented by: Ronnie Smith
641 E. 13th Street
Apt. 6A
New York, NY 10009
(646) 833-5139
PRO SE

V.

Defendant

New York State Child Support
Process Center
Tax Offset Unit

Defendant

Thrift Saving Plan

Date Filed	#	Docket Text
10/07/2019		REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/07/2019		COMPLAINT against New York State Child Support Process Center, Thrift Saving Plan. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/07/2019		Case Designated ECF. (sac) (Entered: 10/07/2019)
10/07/2019		NOTICE OF MOTION OR APPLICATION FOR AN ORDER TO SHOW CAUSE FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PURSUANT TO F.R.C.P. 65. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)

10/07/2019	UNSIGNED ORDER TO SHOW CAUSE filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/07/2019	MEMORANDUM OF LAW in Support re: Order to Show Cause - Unsigned. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/07/2019	AFFIDAVIT of Ronnie Smith in Support re: Order to Show Cause - Unsigned. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/07/2019	APPLICATION for the Court to Request Pro Bono Counsel. Document filed by Ronnie Smith. (sac) (Entered: 10/07/2019)
10/08/2019	ORDER DIRECTING PAYMENT OF FEE OR AMENDED IFP APPLICATION: Plaintiff is directed to render payment of the filing fee or submit an AMENDED IFP application to this Court's <i>Pro Se</i> Office within thirty (30) days of the date of this Order. The Clerk of Court is directed to assign this matter to my docket. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore <i>in forma pauperis</i> status is denied for the purpose of an appeal. See <i>Connedee v. United States</i> , 369 U.S. 438, 444-45 (1962). Filing Fee due by 11/7/2019. AMENDED In Forma Pauperis (IFP) Application due by 11/7/2019. (Signed by Judge Colleen McMahon on 10/08/2019) (Attachments: # Amended IFP Application)(dmg) Transmission to Docket Assistant Clerk for processing. (Entered: 10/08/2019)
10/08/2019	NOTICE OF CASE REASSIGNMENT - SUA SPONTE to Judge Colleen McMahon. Judge Unassigned is no longer assigned to the case. (vh) (Entered: 10/08/2019)
10/08/2019	Mailed a copy of Order Directing Payment of Fee or IFP Application to Ronnie Smith 641 E. 13th Street Apt. 6A New York, NY 10009. (aea) (Entered: 10/08/2019)
10/22/2019	APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS. Document filed by Ronnie Smith. (sc) (Main Document 9 replaced on 10/28/2019) (sc). (Entered: 10/25/2019)
11/08/2019	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. (Signed by Judge Colleen McMahon on 11/8/2019) (va) Transmission to Docket Assistant Clerk for processing. (Entered: 11/08/2019)
11/08/2019	Mailed a copy of Order Granting IFP Application to Ronnie Smith 641 E. 13th Street Apt. 6A New York, NY 10009. (vba) (Entered: 11/08/2019)
11/25/2019	ORDER OF DISMISSAL. The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket. Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiff's request for preliminary injunctive relief (ECF No. 3) is denied. Plaintiff's request for counsel (ECF No. 7) is denied as moot. The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this

	order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). SO ORDERED. (Signed by Judge Colleen McMahon on 11/25/2019) (rjm) Transmission to Docket Assistant Clerk for processing. (Entered: 11/25/2019)
11/25/2019	CIVIL JUDGMENT. IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii). The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's judgment would not be taken in good faith. IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to Plaintiff and note service on the docket. SO ORDERED. (Signed by Judge Colleen McMahon on 11/15/2019) (rjm) Transmission to Docket Assistant Clerk for processing. (Main Document 12 replaced on 11/25/2019) (rjm). (Entered: 11/25/2019)
11/25/2019	Mailed a copy of : Judgment - Sua Sponte (Complaint), : Order of Dismissal, and Notice of Appeal Forms to Ronnie Smith 641 E. 13th Street Apt. 6A New York, NY 10009. (nb) (Entered: 11/25/2019)
12/30/2019	NOTICE OF APPEAL from : Judgment, : Order of Dismissal. Document filed by Ronnie Smith. Form D-P is due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # 1 Motion IFP)(nd) (Entered: 01/03/2020)
12/30/2019	Appeal Fee Due: for : Notice of Appeal. \$505.00 Appeal fee due by : 12/30/2019. IFP status is DENIED on 11/25/2019. New motion to proceed in forma pauperis on appeal is being forwarded to the U.S. Court of Appeals for the Second Circuit.(nd) (Entered: 01/03/2020)
01/03/2020	Transmission of Notice of Appeal and Certified Copy of Docket Sheet to U.S. Court of Appeals re: : Notice of Appeal. (nd) (Entered: 01/03/2020)
01/03/2020	Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for : Notice of Appeal filed by Ronnie Smith were transmitted to the U.S. Court of Appeals. (nd) (Entered: 01/03/2020)
06/29/2020	MANDATE of USCA (Certified Copy) as to : Notice of Appeal filed by Ronnie Smith USCA Case Number 20-0026. Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." <i>Neitzke v. Williams</i> , 490 U.S. 319, 325 (1989); see also 28 U.S.C. § 1915(c). Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 6/29/2020. (tp) (Entered: 06/29/2020)
06/29/2020	Transmission of USCA Mandate/Order to the District Judge re: : USCA Mandate. (tp) (Entered: 06/29/2020)

Case Information
Transmission Receipt

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RONNIE SMITH

Plaintiff,

-against-

19-CV-9266 (CM)

NEW YORK CHILD SUPPORT PROCESS
CENTER, TAX OFFSET UNIT; THRIFT
SAVINGS PLAN.

ORDER OF DISMISSAL

Defendants.

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action alleging that Defendants are willfully depriving him of his civil rights by unlawfully garnishing his federal pension. By order dated November 8, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). For the reasons discussed below, the Court dismisses Plaintiff's complaint for failure to state a claim and denies Plaintiff's request for preliminary injunctive relief.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(3).

While the law mandates dismissal on any of these grounds, the court is obliged to construe *pro se* pleadings liberally. *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret

them to raise the “strongest [claims] that they suggest.” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 553 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 553 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff Rennie Smith, a former federal employee, brings this civil action challenging the garnishment of his Thrift Savings Plan (TSP) retirement account for unpaid child support. Plaintiff filed a complaint (ECF No. 2), a motion for a temporary restraining order and preliminary injunction (ECF No. 3), an unsigned order to show cause (ECF No. 4), and a memorandum of law (ECF No. 5) and affidavit (ECF No. 6) in support of his motion for

emergency relief. Plaintiff asserts that his TSP is "protected exempt income" and that it should not be garnished. (ECF No. 6 at 2.)¹

Plaintiff notes that he is currently challenging, in state court, the lawfulness of the garnishment of his TSP account. He alleges that he filed for a modification of the child support order, but his request was denied because he failed to appear on the return date, "due to circumstances beyond his control." (ECF No. 2 at 5.) Plaintiff appealed that denial to the New York State Appellate Division, First Department, and his appeal is pending. (*Id.*)

Plaintiff demands that this Court issue a mandatory injunction and declaration restraining Defendants from unlawful garnishment of his TSP account. (*Id.* at 6.) He also seeks to have this Court declare that garnishment in the amount of \$8,987.43 is prohibited until Plaintiff has exhausted his state court remedies. (*Id.* at 7.) Finally, Plaintiff seeks a determination from this Court that his TSP account is protected, exempt income. (*Id.*)

DISCUSSION

A. Full Name of Minor Child

It appears that the full name of a minor is noted in several of the documents attached to Plaintiff's memorandum of law in support of his request for preliminary injunctive relief. (ECF No. 5). Rule 5.2(a)(3) of the Federal Rules of Civil Procedure requires that any references to a minor in court submissions must be made by referring only to the minor's initials.

Because of Plaintiff's failure to comply with this rule, the Clerk of Court is directed to limit access to ECF No. 5 on the Court's CM/ECF database to a "case participant only" basis. Plaintiff must comply with Rule 5.2(a)(3) when submitting any documents in the future.

¹ Page numbers refer to those generated by the Court's electronic filing system.

B. Due Process Claim

Plaintiff asserts that Defendants willfully violated his due process rights by unlawfully garnishing his federal pension.

1. Procedural Due Process

The Due Process Clause only protects "against deprivations without due process of law." *Rivera-Powell v. N.Y. City Bd. of Elections*, 470 F.3d 458, 464 (2d Cir. 2006) (quoting *Parmelee v. Taylor*, 451 U.S. 527, 537 (1981)). "The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citations omitted). Determining whether the process provided is adequate requires a weighing of: (1) the private interest affected; (2) the risk of erroneous deprivations and the probative value of further safeguards; and (3) the governmental interest at issue. See *Rivera-Powell*, 470 F.3d at 466 (citing *Mathews v. Eldridge*, 424 U.S. 319, 355 (1976)).

Generally, some kind of predeprivation process must be provided before liberty or property rights are infringed upon. See *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 299 (1981); *Diblasio v. Norelco*, 344 F.3d 292, 302 (2d Cir. 2003). Where a person is deprived of a property right because of a random and unauthorized act, rather than through the operation of established state procedures, the Due Process Clause is satisfied if the state provides an adequate postdeprivation remedy. See *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding that a "random and unauthorized" deprivation of a protected interest does not result in a violation of procedural due process, as long as the state provides an adequate postdeprivation remedy); *Rivera-Powell*, 470 F.3d at 465 (holding that "[w]hen the state conduct in question is random and unauthorized, the state satisfies procedural due process requirements so long as it provides meaningful post-deprivation remedy").

In New York, a child support debtor is entitled to the post-judgment remedies outlined in Section 52 of the New York Civil Practice Law and Rules (CPLR).² For example, when a support collection unit (SCU) issues an execution for enforcement of current support or arrearage, but there is "an error in the amount" purportedly owed, the debtor may assert that error as a "mistake of fact" and "shall have an opportunity to make a submission in support of the objection within fifteen days from service of a copy" of the execution. See N.Y. C.P.L.R. § 5241(a)(8) & (c). The appropriate agency rules on the objection and "notifies the debtor of its determination within 45 days." N.Y. C.P.L.R. § 5241(c)(1). If the agency does not agree with the debtor's objection, the debtor may file an Article 78 proceeding in state court to have the state court review the agency's determination. *Beautease v. Washington Cnty. Support Collection Unit*, 92 A.D.3d 1037, 1038 (2d Dep't 2012) (noting that applicant for relief should commence an Article 78 proceeding after exhausting his remedies before the SCU).

Here, Plaintiff proclaims that his due process rights have been violated. Even if the Court assumes that Plaintiff's property was seized without notice or opportunity to challenge the seizure before it occurred, those facts alone do not give rise to a due process claim. State law, specifically, Section 52 of the CPLR, provides for due process to child support debtors facing seizure or garnishment. If a city or state employee or agency failed to comply with state law, such an omission would constitute a random and unauthorized deprivation of property, but that deprivation does not constitute a procedural due process violation as long as the state provides an adequate postdeprivation remedy.

² The city, state, and federal statutory and regulatory scheme governing child support enforcement is discussed in *O'Brien v. Hunsell*, No. 09-CV-629, 2010 WL 1371366, at *4-*7 (E.D.N.Y. Mar. 31, 2010).

It is unclear whether Plaintiff has availed himself of the remedies available under state law to child support debtors. But the fact that those remedies were available to him defeats his due process claim. See *Rivera-Powell*, 470 F.3d at 462. Plaintiff therefore fails to plausibly allege a violation of his right to procedural due process.

2. Substantive Due Process

Plaintiff's allegations may also be read as raising a substantive due process claim. Substantive due process "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Interpatri Pilots Agency Inc. v. Sammis*, 14 F.3d 133, 144 (2d Cir. 1994) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). Substantive due process rights are violated only when the government has engaged in conduct so egregious it "shocks the conscience." *Ruckelshaus v. California*, 342 U.S. 465, 472 (1952). The Supreme Court has "been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). Conduct that is merely incorrect or ill-advised does not meet this high standard. See *Lowrance v. Achtyl*, 20 F.3d 529, 537 (2d Cir. 1994).

There is nothing in the complaint that rises to the level of "shocking the conscience." See, e.g., *Weinstein v. Albright*, No. 00-CV-1193 (JGK), 2000 WL 1154310, at *5 (S.D.N.Y. 2000) (rejecting substantive due process challenge to federal law authorizing the denial or revocation of a passport to an individual who owes child support arrears exceeding \$5,000), *aff'd*, 261 F.3d 127, 142-43 (2d Cir. 2001). Instead, Plaintiff appears to disagree with the fact that he has been ordered to pay child support and the amount of child support that he has been ordered to pay. Plaintiff therefore fails to plausibly allege a violation of his substantive due process rights.

C. Garnishment of TSP Account

Plaintiff asserts that, under the Employment Retirement Income Security Act (ERISA), his TSP account is exempt protected income that cannot be garnished. See 5 U.S.C. § 8437(e)(1). In most circumstances, funds held in a federal TSP account are statutorily protected against assignment or attachment. There are, however, exceptions to these protections, and an obligation to pay child support is one of them.

Under the TSP statute, TSP account balances are subject to legal process for the enforcement of the account holder's legal obligation to pay child support, as provided in the Social Security Act, 42 U.S.C. § 659. See 5 U.S.C. § 8437(c)(3); *see also Rasooly v. Long*, No. 3:15-CV-4540 (JD), 2017 WL 6539650, * 1 (N.D. Ca. Dec. 21, 2017) (holding that TSP balances may be garnished for enforcement of child support obligations).

The Social Security Act provides that:

Neither the United States . . . nor any disbursing officer shall be liable with respect to any payment made from money's due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

42 U.S.C. § 659(e)(1).

Defendants therefore cannot be held liable for any payments from Plaintiff's TSP account, made pursuant to legal process, to pay his child support obligation.³

³ A publication of the federal TSP entitled, "Court Orders and Power of Attorney," last printed in September 2014, and available online at <https://www.tsp.gov/forms/allpublications.html>, explains the actions the TSP must take if a court order is received and how court orders affect a participant's account. This publication advises participants that a TSP account can be garnished for a participant's alimony or child support debt and details the legal process required, as outlined in 5 C.F.R. Section 1653 Subpart B, before a TSP account can be garnished.

Plaintiff attaches to his memorandum of law a September 13, 2019 letter from the TSP, notifying Plaintiff of the garnishment and advising him that the child support enforcement execution and notice "was evaluated according to the requirements found at 5 U.S.C. § 8437(c) and the regulations at 5 C.F.R. Section 1653 Subpart B." (ECF No. 5 at 10.) Because the relevant statutes explicitly state that TSP accounts are subject to legal process to enforce the account holder's obligation to pay child support and because the legal process required to garnish Plaintiff's TSP account appears to have been followed prior to the garnishment, Plaintiff's claim that Defendants unlawfully garnished his TSP account must be dismissed.

D. Request for Preliminary Injunctive Relief

Plaintiff has filed a motion requesting preliminary injunctive relief. (ECF No. 3.) To obtain such relief, Plaintiff must show: (1) that he is likely to suffer irreparable harm and (2) either (a) a likelihood of success on the merits of his case or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in his favor. *See UBS Fin. Servs., Inc. v. W.V. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011) (citation and internal quotation marks omitted); *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000). Preliminary injunctive relief "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Moore v. Convol. Edison Co. of N.Y., Inc.*, 409 F.3d 506, 510 (2d Cir. 2005) (internal quotation marks and citation omitted).

As set forth above, Plaintiff fails to state a claim for relief. The Court therefore finds that Plaintiff has failed to show (1) a likelihood of success on the merits, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in his favor. Accordingly, Plaintiff's request for an order to show cause is denied.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket. Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Plaintiff's request for preliminary injunctive relief (ECF No. 3) is denied.

Plaintiff's request for counsel (ECF No. 7) is denied as moot.

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 25, 2019
New York, New York


COLLEEN McMAHON
Chief United States District Judge

APPENDIX C

S.D.N.Y. - N.Y.C.
19-cv-9266
McMahon, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of May, two thousand twenty.

Present:

Pierre N. Leval,
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Circuit Judges.

Ronnie Smith,

Plaintiff-Appellant,

v.

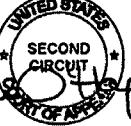
20-26

New York State Child Support Processing Center,
Tax Offset Unit, Thrift Savings Plan,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


S.D.N.Y. - N.Y.C.
19-cv-9266
McMahon, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of May, two thousand twenty.

Present:

Pierre N. Leval,
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Circuit Judges.

USDC-20-19266-1
DOCUMENT
ELECTRONICALLY FILED
DATE FILED: Jun 29 2020

Ronnie Smith.

Plaintiff-Appellant,

v.

20-26

New York State Child Support Processing Center,
Tax Offset Unit, Thrift Savings Plan,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe

APPENDIX D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PROOF OF SERVICE

Plaintiff,

-against-

19-CV-9266 (CM)

**U.S. DEPARTMENT OF JUSTICE,
CIVIL SUPPORT PROCESS
CENTER, TAX OFFSET UNIT, THRIFT
SAVINGS PLAN.**

ORDER GRANTING THE APPLICATION

Defendant.

COLLEEN McMAHON, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. See 28 U.S.C.

§ 1915.

SO ORDERED.

Dated: November 8, 2019

Colleen McMahon


COLLEEN McMAHON
Chief United States District Judge

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

Ronnie Smith, Pro Se,
Plaintiff-Appellant,

v.

New York State Child Processing Center, Tax Offset Unit;
Thrift Saving Plan,
Defendants-Appellees.

CERTIFICATE OF COMPLIANCE PURSUANT TO 28 USC SECTION 1746

The Petitioner has complied with type-volume limitation pursuant to 28 USC Section 1746, and Supreme Court Rule 33, because

- i) The Writ of Certiorari Petition contains 4,994 words, 22,006 characters with no spaces, 28,071 characters with spaces, 211 paragraphs; or
- ii) The Writ of Certiorari Petition contains 570 Lines: of text, mono-spaced typeface and excluding verbatim quotation required under

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

Ronnie Smith, Pro Se,
Plaintiff-Appellant,

v.

New York State Child Support Processing Center, Offset Unit;
Thrift Saving Plan,
Defendants-Appellees.

**PETITIONMER'S AFFIDAVIT IN SUPPORT OF MOTION FOR
APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
PURSUANT TO SUPREME COURT RULE 39**

1. Ronnie Smith, appearing pro se, being duly sworn, deposes and says:
2. That I am the Petitioner named in the above caption reference matter and respectfully submit this pleading pursuant to the United States Supreme Court Rule 39, as instructed in Supreme Court Rule 12.2, and Rule 14.5, within 60 days.
3. Petitioner has been out of work since 2014 on job related injuries and only income is Public Assistance benefits and would be unable to pay the this Supreme Court filing fees cost unless this application is granted based on Petitioner's indigent hardship status.
4. Because Petitioner was grant forma pauperis status by lower the district

court from the inception of this litigation (See, Appendix D), and there exist no legal reasoning or basis why this Supreme Court should deny granting Petitioner's forma pauperis status to prosecute this Writ of Certiorari.

5. Petitioner have no relatives or friends who he can obtain resources to prosecute this Writ of certiorari, nor do they have a duty or abilities to support Petitioner in doing so towards his total bi-weekly income from Public Assistance benefits. (See, Hollier v. Broussard, 220 So.2d 175, 177 La. App. 3d Cir. 1989); State Interest of Garrison, 242 So. 2d. 100, 111 (La. App. 4th Cir. 1970).

6. In most cases litigants on a low income budget i.e., Public Assistance, SSI Benefits, and certain types of disability benefits and retirement benefits. It would be therefore, unreasonable for this Supreme Court to deny Petitioner this request for forma pauperis status to prosecute this Writ of Certiorari since Petitioner meets all the requirement of being impoverished and is appearing pro se. See, Cases And materials On Pro Se Litigation And Related Issues, Prepared By ABA Lawyers Conference Annual meeting, Tucson, Arizona, Dated May 1-4 (1977), By Jona Goldschmidt, Associate professor Department of criminal Justice Loyola University Chicago, observation listed below:

VI. Judicial Response To Pro Se Litigation.

- A. The right of access to the court and the "meaningful hearing" requirement of due process, "and indeed every person has a right of access to the courts which is protected by the United States Constitution." See, White v. Lewis, 804 P.2d 805 (Az. 1991), citing Ex

Parte Hull, 61 S.t. 640 (1941); Johnson v. Avery, 89 S.Ct. 747 (1969); Wolf v. M.cDonnell, 94 S.Ct. 2963 (1974). "Due Process" requires a meaningful opportunity to be heard, granted at a meaningful time, and in a meaningful manner. See, Logan v. Zimmerman Bush Co., 455 U.S. 422 (1982); Little v. Streator, 452 U.S. 1 (1980); Armstrong v. Manzo, 380 U.S. 545 (1965); Howard v. M. Rubin, The Civil pro Se Litigant v. The legal System, 20 Loy. U. Chi. L.J., 999 (1989); Jiles M. Bradlow, Procedural Due Process Rights of Pro Se Litigants, 55 U. Chi. L. Rev., 659 (1989); Helen B. Kim, Legal Education For the Pro Se Litigant: A Step Towards A Meaningful Right To Be Heard, Yale L.J., 1641 (1987).

B. The Traditional Role Of Judges.

Judges also, has a duty under canon 3 of the Code to "be patient, dignified, and courteous to litigants..." (See, B4). However, the duty to dispose promptly of the business of the court. Judges can be efficient and business like while being patient and deliberate.' (Commentary, See, B4). Further, judges :"shall accord to every person who has a legal interest in a proceeding...the right to be heard according to law." (See, B7) "Law" includes the court rules, statutes, constitutional provisions and decisional law. (Code, terminology) In addition, judges also, "must demonstrate due regards for the rights of the parties to be heard and have issues resolved without un-necessary cost or delay." (Commentary, See, 8). Finally, judges have a duty to assure that court officials "refrain from manifesting bias or prejudices in the performing of their official duties." (Canon 3, See, C2). This latter provision suggest a duty upon judges generally and especially administrative judges, to assure their court staff provide assistance in an impartial manner.

7. Furthermore, the district court and this Court rules favor Petitioner's chances securing *forma pauperis* status. Since *forma pauperis* proceedings are authorized in Federal Courts by 28 USC Section 1915. The steps process requires first a determination of whether the plaintiff qualifies by economic status, and second determination cause of action is frivolous or malicious. See, Marin-Trigona v. Stewart, 619 F.2d 856 (8th Cir. 1982). The statutes dived the civil plaintiffs in two categories, those who are prisoners and those