

UNPUBLISHED

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

No. 20-6337

ALIMAMY BARRIE,

Plaintiff - Appellant,

v.

MATTHEW M. ROBINSON,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paul W. Grimm, District Judge. (8:19-cv-01443-PWG)

Submitted: July 21, 2020

Decided: July 24, 2020

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Alimamy Barrie, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alimamy Barrie appeals the district court's order dismissing Barrie's civil action alleging legal malpractice and negligence. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Barrie v. Robinson*, No. 8:19-cv-01443-PWG (D. Md. filed Feb. 25, 2020; entered Feb. 26, 2020). However, because the dismissal was for lack of subject matter jurisdiction, we modify the judgment to reflect that the dismissal is without prejudice. *See S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for . . . [a] defect in subject matter jurisdiction[] must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits."). 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.

AFFIRMED AS MODIFIED

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
PAUL W. GRIMM
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
(301) 344-0670
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February 24, 2020

RE: *Alimamy Barrie v. Matthew Robinson*
PWG-19-1443

LETTER ORDER

Dear Parties:

This letter order addresses Defendant's Motion to Dismiss (ECF No. 7) and Plaintiff's Motion for Summary Judgment (ECF No. 13). Having reviewed the filings, I find that a hearing is unnecessary in this case. *See Loc. R. 105.6* (D. Md. 2018). For the reasons stated herein, Defendant's motion is GRANTED, Plaintiff's motion is DENIED, and this case is DISMISSED WITH PREJUDICE.

Alimamy Barrie filed a Complaint (ECF No. 1) *pro se* on May 16, 2019 against Matthew Robinson, alleging legal malpractice and negligence and seeking declaratory, compensatory, and punitive relief. The well-pleaded allegations in a *pro se* complaint are accepted as true for purposes of resolving a dismissal motion. *See Aziz v. Alcolac*, 658 F.3d 388, 390 (4th Cir. 2011). Additionally, *pro se* complaints are "liberally construed" and are "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Court, however, cannot ignore a clear failure to allege facts that support a viable claim. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990). Here, after responding to Mr. Robinson's dismissal motion, Mr. Barrie filed a motion for summary judgment, which I allowed (ECF No. 14), and Mr. Robinson responded (ECF No. 15).

Because matters outside the pleadings will be considered, both motions will be treated as motions for summary judgment. Summary judgment is governed by Fed. R. Civ. P. 56(a), which provides that: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The court should "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in [his] favor without weighing the evidence or assessing the witnesses' credibility." *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 645 (4th Cir. 2002). The court must, however, also abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 526 (4th Cir. 2003) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

Mr. Barrie is a prisoner in Florida under the jurisdiction of the Federal Bureau of Prisons. Compl. ¶ 3. In 2014, after a seven-day jury trial, the jury found him guilty of two counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of aggravated identify theft, in violation of 18 U.S.C. § 1028A. *Id.* at ¶¶ 7-8. Mr. Barrie appealed, and the Fourth Circuit affirmed his conviction and sentence in November 2015. *Id.* at ¶ 9. He then filed a petition for *writ of certiorari* to the United States Supreme Court, which was denied. *Id.* at ¶ 10. On February 16, 2016, through his sister, Mr. Barrie retained Mr. Robinson to file his 28 U.S.C. § 2255 federal *habeas corpus* motion. *Id.* at ¶ 11. Mr. Barrie initially alleged that Mr. Robinson is a member of the Maryland Bar, *id.* at ¶ 4, but in his motion for summary judgment, he states that Mr. Robinson “is not a member of the Maryland State Bar and was not authorize[d] to practice law before this Court.” Pl.’s Mot. ¶ 1, ECF No. 13. Mr. Robinson is a member of the Kentucky State Bar, and he represented Mr. Barrie under authorization of this Court’s Local Rule 201.¹ Def.’s Mot. 1, ECF No. 7; ECF No. 7-1, Def.’s Resp. 1, ECF No. 15. Therefore, Mr. Barrie’s claims of Mr. Robinson’s unauthorized practice of law fail.

In June 2017, I denied Mr. Barrie’s § 2255 motion. *See* Mem. Op. & Order, ECF No. 145 in PWG-14-cr-00006. Almost a year later, Mr. Barrie filed a formal complaint with the Kentucky Bar Association alleging that Mr. Robinson had failed to submit affidavits from witnesses that would have helped his case, provided false facts to the court, failed to argue that his appellate counsel was ineffective, and failed to present well-formed arguments on the § 2255 motion. Compl. ¶ 13. The Bar Counsel investigated and determined that the complaint did “not state an ethical violation and is not suitable for alternative disposition.” ECF No. 7-3. Mr. Barrie now makes the same allegations here—legal malpractice and negligence.

To satisfy a legal malpractice claim in a malpractice action arising from a criminal conviction, the claimant must establish the following elements: “(1) the prior employment of the lawyer; (2) the lawyer’s neglect of a reasonable duty; (3) loss to the client proximately caused by that neglect of duty; (4) the criminal plaintiff’s initiation of post conviction, appellate, or habeas relief premised on the lawyer’s error; (5) and, ultimately, the criminal plaintiff’s successful pursuit of post conviction, appellate, or habeas relief based on attorney error.” *Berringer v. Steele*, 758 A.2d 574, 604 (Md. Ct. Spec. App. 2000). Importantly, “[i]f a potential criminal plaintiff is unsuccessful in obtaining relief from conviction, then it would seem that the attorneys’ conduct was not the proximate cause of the conviction or injury.” *Harrigan v. Rolle*, Civil Action No. ELH-14-00199, 2014 WL 7146970, at *11 (D. Md. Dec. 12, 2014) (quoting *Berringer*, 758 A.2d at 597).

Because Mr. Barrie cannot show the successful pursuit of post-conviction relief based on attorney error, his criminal malpractice claim must fail. Additionally, as Mr. Robinson notes, Mr. Barrie has not pleaded actual malice or any facts that support a finding of actual malice sufficient to support his claim for punitive damages of \$100,000. Punitive damages only can be recovered under Maryland law if there is actual malice,² and to invoke diversity jurisdiction, a plaintiff must

¹ Under Local Rule 201.1.b, the Court may permit any attorney who is an active member in good standing of the bar of any other United States court or of the highest court of any state to appear and participate as counsel in a particular criminal case.

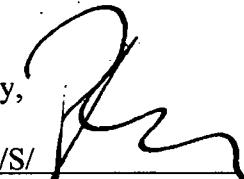
² That is, “evil motive, intent to injure, ill will, or fraud.” *Ellerin v. Fairfax Savings, F.S.B.*, 652

have pleaded actual malice on a claim for which punitive damages are available as a matter of law. *Mudd v. Comcast of Maryland, LLC*, No. PWG-14-231, 2015 WL 773017, at *4 (D. Md. Feb. 23, 2015) (citations omitted). Without a viable claim for punitive damages, Mr. Barrie claims only compensatory damages of \$12,500, which is insufficient to support diversity jurisdiction under 28 U.S.C. § 1332. Further, I decline to re-review on the merits the arguments that Mr. Barrie repeats that I previously rejected in his § 2255 proceedings.

Accordingly, Defendant's Motion to Dismiss is GRANTED, and Plaintiff's Motion for Summary Judgment is DENIED. This case is DISMISSED WITH PREJUDICE. The Clerk of the Court shall CLOSE this case.

Although informal, this is an Order of the Court and shall be docketed as such. The Clerk shall mail a copy of this Order to Plaintiff at his address of record.

Sincerely,

/S/ 

Paul W. Grimm
United States District Judge

2/24/2020

I. Civil

Rule 101. Counsel.

1. Who May Appear as Counsel; Who May Appear Without Counsel.-

a. *Generally.*- Except as otherwise provided in this Rule and in L.R. 112.3 and 28 U.S.C. § 515, only members of the Bar of this Court may appear as counsel in civil cases. Individuals who are parties in civil cases may only represent themselves. Individuals representing themselves are responsible for performing all duties imposed upon counsel by these Rules and all other applicable federal rules of procedure. All parties other than individuals must be represented by counsel.

b. Pro Hac Vice.-

i. *Generally.*- Except as provided in subsection (v) of this Rule, the Court may permit any attorney who is an active member in good standing of the bar of any other United States court or of the highest court of any state to appear and participate as counsel in a particular civil case. Such permission shall not constitute formal admission to the Bar of this Court. However, an attorney admitted pro hac vice is subject to the disciplinary jurisdiction of this Court. Any party represented by an attorney who has been admitted pro hac vice must also be represented by an attorney who is, and continuously remains, an active member in good standing of the Bar of this Court who shall sign all documents and, unless excused by the presiding judge, be present at any court proceedings.

ii. *Certification Requirement.*- The Motion for Admission Pro Hac Vice shall include a certification as to the number of times the attorney has been admitted pro hac vice during the twelve (12) months immediately preceding the filing of the motion and identify any other active cases in this Court in which the attorney is admitted pro hac vice.

iii. *Limitation.*- Admission pro hac vice is not a substitute for admission to the Bar of this Court, but rather is intended to facilitate occasional appearances only. Unless otherwise ordered for good cause shown, no attorney may be admitted pro hac vice in more than three (3) unrelated cases in any twelve (12) month period, nor may any attorney be admitted pro hac vice in more than three (3) active unrelated cases at any one time.

iv. *Multi-District Litigation.*- Attorneys in multi-district litigation cases need not be members

of this Court's Bar. Instead, an attorney may move for admission pro hac vice if the attorney is a member in good standing of the bar of any United States District Court. For purposes of this subsection only, attorneys requesting admission pro hac vice (1) are not required to have their admissions moved by an active member of this Court's bar, (2) do not need another member of this Court's bar to sign pleadings or enter appearances, and (3) are limited to practice in this Court in only the multi-district litigation proceeding.

v. *Limitation on Maryland Attorneys.* - An attorney, who is an active member of the Maryland Bar or maintains any law office in Maryland, is ineligible for admission pro hac vice. For the purposes of this subsection, an attorney shall be deemed to maintain an office in Maryland if a Maryland address is used by that attorney on any document filed in this Court for purposes of satisfying L.R. 102.1.b. However, if an attorney is a member of a law firm having offices in multiple jurisdictions, an attorney who is a member of such a firm shall not be deemed to maintain a law office in Maryland if that attorney does not maintain a regular physical presence in the Maryland office of the firm. Failure of an attorney to satisfy this continuing requirement may result in the revocation of the attorney's pro hac vice admission.

c. *Appearance for Obtaining Deposition Subpoenas.* - Unless otherwise ordered by the Court, it shall not be necessary for counsel to be admitted to the Bar of this Court in order to participate in proceedings to enforce or to quash any subpoena as provided by Fed. R. Civ. P. 45. However, an attorney exempted by this Rule from the requirement of being admitted to the Bar of this Court is subject to the disciplinary jurisdiction of this Court.

d. *Duty to Avoid Scheduling Conflicts.* - Before entering an appearance in a case, counsel must inquire whether any hearing date or a trial date has already been set in the case. If a date has been set and it conflicts with counsel's schedule in any respect, counsel shall not enter an appearance unless counsel first resolves the conflict by obtaining a continuance of one of the conflicting proceedings or, if counsel is a member of a firm, obtaining the client's consent to have another member of the firm appear on the client's behalf. After entering an appearance, counsel has a continuing duty to honor all scheduling commitments made to the Court.

2. *Withdrawal of Appearance.* -

a. *Individuals.* - In the case of an individual, appearance of counsel may be withdrawn only with leave of court and if (1) appearance of other counsel has been entered, or (2) withdrawing counsel files a certificate stating (a) the name and last known address of the client, and (b) that a written notice has been mailed to or otherwise served upon the client at least seven (7) days previously advising the client of counsel's proposed withdrawal and notifying the client either to have new counsel enter an appearance or to advise the Clerk that the client will be proceeding without counsel. If the withdrawal of counsel's appearance is permitted, the Clerk shall notify the party that the party will be deemed to be proceeding without counsel unless and until new counsel

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enters an appearance on behalf of the party.

b. *Parties Other Than Individuals.*- In the case of any party other than an individual, including corporations, partnerships, unincorporated associations and government entities, appearance of counsel may be withdrawn only with leave of court and if (1) appearance of other counsel has been entered, or (2) withdrawing counsel files a certificate stating (a) the name and last known address of the client, and (b) that the written notice has been mailed to or otherwise served upon the client at least seven (7) days previously advising the client of counsel's proposed withdrawal and notifying it that it must have new counsel enter an appearance or be subject to the dismissal of its claims and/or default judgment on claims against it. In the event that within thirty (30) days of the filing of the motion to withdraw, new counsel has not entered an appearance, the Court may take such action, if any, that it deems appropriate, including granting the motion to withdraw and dismissing any affirmative claim for relief asserted by the party and/or directing the party to show cause why a default should not be entered on claims asserted against it.

c. *Automatic Termination of Appearance.*- When no appeal has been taken from a final judgment, and upon the resolution of any post-judgment motion or matter under L.R. 109, the appearance of an attorney is automatically deemed terminated upon the expiration of the appeal period, unless otherwise ordered by the court. If an appeal is taken, the appearance of the attorney is automatically deemed terminated ninety (90) days after the issuance of a mandate of the court of appeals.

[Amended Aug. 16, 2004, effective Aug. 16, 2004; by order effective January 1, 2008; amended effective December 1, 2009; amended effective July 1, 2010; amended effective July 1, 2011; amended effective July 1, 2014; amended June 1, 2016, effective July 1, 2016.]

II. Criminal

Rule 201. Counsel.

1. Who may appear as counsel.-

a) *Generally.*- Except as otherwise provided in this Rule, a defendant in a criminal case may only be represented by a member of the Bar of this Court.

b) *Pro Hac Vice.*- The Court may permit any attorney who is an active member in good standing of the bar of any other United States court or of the highest court of any state to appear and participate as counsel in a particular criminal case. Such permission shall not constitute formal admission to the Bar of this Court. However, an attorney admitted pro hac vice is subject to the disciplinary jurisdiction of this Court. Any party represented by an attorney who has been admitted pro hac vice must also be represented by an attorney who is, and continuously remains, an active member in good standing of the Bar of this Court who shall sign all documents and, unless excused by the presiding judge, be present at any court proceedings.

2. *Appointment of counsel.*- Counsel for indigent defendants shall be appointed in accordance with the procedures established by the plan as adopted and amended by the Court from time to time pursuant to 18 U.S.C. § 3006A. The plan is available for public inspection through the Clerk's Office.

3. *Withdrawal of appearance.*- Counsel for a defendant may withdraw their appearance only with leave of court except as provided by L.R. 101.2.c.

[Amended Aug. 16, 2004, effective Aug. 16, 2004; by order effective January 1, 2008; and amended effective December 1, 2009; amended effective July 1, 2014; amended June 1, 2016, effective July 1, 2016; amended effective December 1, 2018.]

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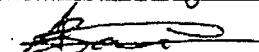
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05-19-2017

Dear Hon. Paul W. Grimm

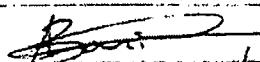
I am writing you this letter to bring your attention to an important legal issue that has been overlooked by my Court appointed Direct appeals lawyer, the fourth Circuit Court of Appeals and also my current lawyer Mr. Robinson. Amid other issues raised in my 2255 motion I specifically asked attorney Robinson to include the fact that the newly amended Sentencing guidelines should apply in my favor because my sentence and case was still under direct review in the fourth Circuit Court of Appeals. I made reference to the revised definition of Intended loss in which Courts have expressed some disagreement as to whether a Subjective or an Objective Inquiry is required. This revised definition provides that intended loss means the pecuniary harm that the defendant Purposely sought to inflict. The amendment reflects the Commission's continued belief that Intended loss is an important factor in economic crime offenses, but also recognizes that sentencing enhancements predicated on intended loss, rather than losses that have actually accrued, should focus more specifically on the defendant's culpability. The record in my case shows that the maximum available was the attempted transfer amount of \$210,403.61. I was charged with making two phone calls and nothing in those calls requested any amount of money to be transferred. You are very well in knowing about the case so I won't elaborate on the facts all I am asking His Honorable Court is to apply the necessary relief that I am entitled to because it is very hard to get any help from lawyers and I truly don't understand how the law works. I know that my words will be construed to satisfy the needs or wants of many but I just want to be represented the right way.



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Continued

In United States v. Kris Koranteng 14-00380 PWG a case in which you are assigned to and have recently Granted relief in defendants 2255 Motion based on Counsel ineffectiveness at sentencing for failure to raise the newly amended Sentencing guidelines. The defendant was originally sentenced to 33 months for an actual loss of over 1 million dollars and also received a 5 months Sentence for Violating his federal Supervision while on release in a case out of the Eastern District of Virginia. You Granted relief and reduce his sentence to 29 months. The disparities in sentencing are highly noted because the Circumstances are mostly similar. I have allowed people to speak on my behalf and I am not properly being represented. This has gone on for too long and I am the one who suffers tremendously so therefore I have elected to write you a brief letter and I hope and Prays that it meets you in good spirit and Please excuse my misunderstanding of the law but this is my life I am fighting for a Second Chance.



5/19/2017

I have forwarded a copy of this letter to the following:-

Kelly O Hayes

Office of AUSA

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Greenbelt, MD 20770

Matthew Robinson

Attorney at law

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Jeffrey M. Brandt, Esq.+

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Voice (859) 581-7777
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May 25, 2017

Alimamy Barrie
39273-037
FCI Ashland
P.O. Box 6001
Ashland, KY 41105

re: United States v. Alimamy Barrie; District of MD Case No. 8:14-cr-00006-PWG

Dear Mr. Barrie:

I am writing with concern because of your decision to write the judge and complain about the arguments in your pending § 2255 motion.

I understand that you want the 2015 Guidelines to apply to you. It would likely mean a 2-level reduction in your offense level. As I explained before I filed your § 2255 motion, we are asking that your sentence is vacated and remanded for a new sentencing hearing. If the argument is successful and you are re-sentenced, you will be sentenced under the current version of the Guidelines and you will receive the benefit of the 2015 amendment.

However, I cannot make an argument that your appellate attorney was ineffective for failing to argue that the 2015 should have applied to you. This is because they did not apply to you. You were sentenced in 2014 and the court properly applied the Guidelines that were in effect at that time. There is no legal authority for your argument that because your case was pending on appeal when the 2015 Guidelines went into effect, your attorney should have asked for the 2015 Guidelines to apply. Whoever told you this is has no idea what they are talking about. The only way an amendment to the Guidelines applies retroactively is if the Sentencing Commission makes the amendment retroactive. The sentencing commission did not make the 2015 amendments to § 2B1.1 retroactive. In your letter to the judge you point to the case of US v. Koranteng. I reviewed the 2255 motion and the order granting an amended judgment in that case. That case has nothing to do with the 2015 amendments to the Guidelines.

The point is, you are 100% wrong in your belief that your suggested argument should have been raised. The argument is frivolous and would weaken the other arguments raised in your pending § 2255 motion. Your decision to write the judge and allege that I am not representing you properly may have violated the attorney-client privilege and jeopardized my continued representation.

Your actions have left you with a choice to make: (1) if you want me to continue to represent you, you must write to me explaining that you were mistaken and that you are satisfied with my representation, or (2) if I do not receive that letter, I must move to withdraw as your attorney citing

* Licensed in Kentucky, multiple federal district and circuit courts, and the U.S. Supreme Court

+ Licensed in Kentucky, Ohio, the District of Columbia, multiple federal district and circuit courts, and the U.S. Supreme Court

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an attorney-client conflict. I hope that you decide to keep me as your attorney. If I do not hear from you by June 25, 2017, I will move to withdraw.

I await your response.

Sincerely,

/s/ Matthew M. Robinson
Attorney at Law
MMR/rmm

Enclosures: *The Bulletin*