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Mailing list

RE: Case No: 2019-155732-001

96 paged Writ of Habeas Corpus
by way of Writ of Certiorari

Includes

Appendix A 69 pages

Appendix B 7 pages

Under Ex Parte Yerger 1868

original Jurisdiction is the
Supreme Court of the United States

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SUPREME COURT U.S.

2020
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FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEC 11 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALFRED E. CARAFFA,

Petitioner-Appellant,

v.

STATE OF ARIZONA,

Respondent-Appellee.

No. 20-16295

D.C. No. 2:20-cv-00598-MTL-ESW
District of Arizona,
Phoenix

ORDER

*Exhibit of
Evidence*

XXX-17993

Before: BYBEE and HURWITZ, Circuit Judges.

DCS

The court has considered all filings submitted by appellant in support of his request for a certificate of appealability. The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Wilson v. Belleque*, 554 F.3d 816, 825-26 (9th Cir. 2009).

Any pending motions are denied as moot.

DENIED.

*2A of
69*

*U.S. Supreme Court Exhibit of
Evidence XXX-17993*

23 total

2020
01/14

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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JAN 14 2021

MOLLY C. DWYER, CLERK
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District of Arizona,
Phoenix

ORDER

Notice
Stamp

Before: THOMAS, Chief Judge, and BRESS, Circuit Judge.

This court denied appellant's request for a certificate of appealability on December 11, 2020. Accordingly, his motion to consolidate (Docket Entry No. 16) is denied.

2 B of 69

This case remains closed.

U. S. Supreme Court
Exhibit of
Evidence ~~XXXX-17894~~

DC-~~8~~ ~~25-1601~~

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 23 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALFRED E. CARAFFA,

Plaintiff-Appellant,

v.

STATE OF ARIZONA; et al.,

Defendants-Appellees,

and

UNKNOWN PARTY, MCSO B1300;
UNKNOWN PARTY, MCSO Deputy
B0429,

Defendants.

No. 20-16246

D.C. No. 2:20-cv-00800-MTL-
ESW

District of Arizona,
Phoenix



ORDER

Exhibit of
Evidence

SEE 17 25 of
69

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

The district court certified that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a). On June 29, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the responses to the court's June 29, 2020 order, and the opening brief received on July 16, 2020, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis

SEE 17 of 25

(Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

Exhibit of Evidence

~~DC-2~~

UNSIGNEd, UNAUTHORIZED
and UNVALIDATED by ANY
9th Circuit Judge. So this
document by Federal Rule
U.S.C.A. under Original
Signatures IS Fraudulent
and UNVALIDATED, therefore
IS illegal AS An Court order.

20 of 69

~~of 30 of 30 pages~~

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FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEB 23 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALFRED E. CARAFFA,

No. 20-16246

Plaintiff-Appellant,

D.C. No. 2:20-cv-00800-MTL-
ESW

v.

District of Arizona,
Phoenix

STATE OF ARIZONA; et al.,

ORDER

Defendants-Appellees,

and

UNKNOWN PARTY, MCSO B1300;
UNKNOWN PARTY, MCSO Deputy
B0429,

Defendants.

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

The district court certified that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a). On June 29, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the responses to the court's June 29, 2020 order, and the opening brief received on July 16, 2020, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis

(Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Alfred E Caraffa,
10 Plaintiff,
11 v.
12 State of Arizona, et al.,
13 Defendants.
14

NO. CV-20-00800-PHX-MTL (ESW)
JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed May
18 20, 2020, Plaintiff to take nothing, and the complaint and action are dismissed with
19 prejudice for failure to state a claim. This dismissal may count as a "strike" under
20 28 U.S.C. § 1915(g).

21 Debra D. Lucas
22 Acting District Court Executive/Clerk of Court
23

24 May 27, 2020
25

26 By s/ Rebecca Kobza
27 Deputy Clerk
28

1 WO

MDR

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

9 Alfred E. Caraffa,

10 Plaintiff,

11 v.

12 State of Arizona, et al.,

13 Defendants.

14 No. CV 20-00800-PHX-MTL (ESW)

ORDER

15 On April 23, 2020, Plaintiff Alfred E. Caraffa, who is confined in a Maricopa
16 County Jail, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983. In a May
17 1, 2020 Order, the Court gave Plaintiff thirty days to pay the filing and administrative fees
18 or file an Application to Proceed In Forma Pauperis. The Court also denied as moot
19 Plaintiff's "Motion to Combine with Same Issues of. Additional to Case CV-20-00598-
20 PHX," which was attached to Plaintiff's Complaint, because *Caraffa v. Arizona*, CV 20-
21 00598-PHX-MTL (ESW) was closed.

22 On May 18, 2020, Plaintiff filed a First Amended Complaint (Doc. 5 at 24) and an
23 Application to Proceed In Forma Pauperis (Doc. 6). The Court will grant the Application
24 to Proceed and will dismiss the First Amended Complaint and this action.

25 **I. Application to Proceed In Forma Pauperis and Filing Fee**

26 The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28
27 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
28 § 1915(b)(1). The Court will assess an initial partial filing fee of \$5.00. The remainder of

1 the fee will be collected monthly in payments of 20% of the previous month's income
 2 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00.
 3 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
 4 government agency to collect and forward the fees according to the statutory formula.

5 **II. Statutory Screening of Prisoner Complaints**

6 The Court is required to screen complaints brought by prisoners seeking relief
 7 against a governmental entity or an officer or an employee of a governmental entity. 28
 8 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
 9 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
 10 relief may be granted, or that seek monetary relief from a defendant who is immune from
 11 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

12 A pleading must contain a “short and plain statement of the claim *showing* that the
 13 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 14 not demand detailed factual allegations, “it demands more than an unadorned, the-
 15 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 16 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 17 conclusory statements, do not suffice.” *Id.*

18 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 19 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 20 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 21 that allows the court to draw the reasonable inference that the defendant is liable for the
 22 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 23 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 24 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 25 allegations may be consistent with a constitutional claim, a court must assess whether there
 26 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

27 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 28 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342

1 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less stringent
 2 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 3 U.S. 89, 94 (2007) (per curiam)).

4 If the Court determines that a pleading could be cured by the allegation of other
 5 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
 6 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 7 Plaintiff’s First Amended Complaint will be dismissed for failure to state a claim, without
 8 leave to amend because the defects cannot be corrected.

9 **III. First Amended Complaint**

10 The First Amended Complaint supersedes the original Complaint. *Ferdik v.*
 11 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner &*
 12 *Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court treats the original
 13 Complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Thus, the Court will consider only
 14 those claims raised in the First Amended Complaint against only those Defendants named
 15 in the First Amended Complaint.

16 In his four-count First Amended Complaint, Plaintiff seeks monetary damages from
 17 Defendants the State of Arizona, the Maricopa County Sheriff’s Office (MCSO), and the
 18 United States. In each count, Plaintiff alleges violations of his due process rights.

19 In **Count One**, Plaintiff claims that on April 7, 2020, he filed a motion to dismiss
 20 counsel, a motion for appointment of new counsel, and a motion “for the right to appeal
 21 and be heard” in his state court criminal case, but he has not had a “motion hearing,”
 22 although, “[b]y procedure a motion shall be heard in 10 days.”

23 In **Count Two**, Plaintiff alleges that on April 7, 2020, he filed a motion for a new
 24 attorney to be appointed “to [his] habeas corpus hearing” in his state court criminal case,
 25 but no new counsel has been appointed and he has been “illegally incarcerated for 156
 26 days[,] with a motion filed for 35 days for a[] habeas corpus hearing.”

27 In **Count Three**, Plaintiff asserts that on May 11, 2020, he had an “illegal attorney
 28 visit” with his attorney at the Legal Defender’s Office. He contends that he filed a motion

1 for new counsel on April 7, 2020, but the attorney has represented him in three “illegal
 2 court hearings” and has “failed to bring a just defense in [his] illegal case.”

3 In **Count Four**, Plaintiff alleges the undersigned stated in a prior order in this case
 4 that CV 20-00598-PHX-MTL (ESW) is closed. Plaintiff contends:

5 [T]he Court[’]s error was the civil action case of habeas corpus is case
 6 CV-20-00774-PHX-MTL (ESW).

7 [T]he federal courts had Judge Liburdi presiding over case 20-CV-
 8 00598-PHX-MTL (ESW) which was a[] criminal matter of habeas
 9 corpus before conviction. There was no civil complaint filed with the
 writ of habeas corpus.”

10 Since the federal court[’]s dismissal of the criminal case before a[]
 11 civil judge who ruled on a[] criminal habeas corpus case and
 12 dismissed the case as a civil action.

13 [T]he Plaintiff filed civil actions under the civil case no. of that action.

14 [T]he federal courts gave the same case a new civil number to hide
 15 the facts a civil judge presided over and dismissed a[] criminal
 action[] that later became a civil action lawsuit.

16 **IV. Failure to State a Claim**

17 First, under the Eleventh Amendment to the Constitution of the United States, a
 18 state or state agency may not be sued in federal court without its consent. *Pennhurst State*
 19 *Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Taylor v. List*, 880 F.2d 1040, 1045
 20 (9th Cir. 1989). Furthermore, “a state is not a ‘person’ for purposes of section 1983.”
 21 *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (citation omitted).
 22 Therefore, the Court will dismiss Defendant State of Arizona.

23 Second, the Maricopa County Sheriff’s Office is not a proper defendant because it
 24 is a “non-jural entity.” *Melendres v. Arpaio*, 784 F.3d 1254, 1260 (9th Cir. 2015) (citing
 25 *Braillard v. Maricopa County*, 232 P.3d 1263, 1269 (Ariz. Ct. App. 2010)). In Arizona,
 26 the responsibility of operating jails and caring for prisoners is placed by law upon the
 27 sheriff. *See* Ariz. Rev. Stat. §§ 11-441(A)(5), 31-101. A sheriff’s office is simply an
 28 administrative creation of the county sheriff to allow him to carry out his statutory duties

1 and is not a “person” amenable to suit pursuant to § 1983. Accordingly, the Court will
2 dismiss Defendant MCSO.

3 Third, any claim against a federal actor arises under *Bivens v. Six Unknown Named*
4 *Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), not § 1983. *See Martin v.*
5 *Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (“Actions under § 1983 and those under *Bivens* are
6 identical save for the replacement of a state actor under § 1983 by a federal actor under
7 *Bivens*.” (quoting *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991))). However, a
8 remedy does not exist under *Bivens* against the United States because a *Bivens* action is
9 only available against federal *officers*, not against the United States or agencies of the
10 federal government. *FDIC v. Meyer*, 510 U.S. 471, 484-86 (1994). Thus, the Court will
11 dismiss Defendant United States.

12 Fourth, the issues in Counts One and Two relate to the trial court’s apparent delay
13 in ruling on Plaintiff’s motions in his criminal case. But “deciding when to decide a case,
14 no less than deciding the case itself, is a judicial act for which a judge is absolutely
15 immune.” *Lowe v. Letsinger*, 772 F.2d 308, 312 (7th Cir. 1985). Moreover, the abstention
16 doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971), prevents a federal court in most
17 circumstances from directly interfering with ongoing criminal proceedings in state court.
18 “Only in the most unusual circumstances is a defendant entitled to have federal
19 interposition by way of injunction or habeas corpus until after the jury comes in, judgment
20 has been appealed from and the case concluded in the state courts.” *Drury v. Cox*, 457
21 F.2d 764, 764-65 (9th Cir. 1972). Special circumstances occur “[o]nly in cases of proven
22 harassment or prosecutions undertaken by state officials in bad faith without hope of
23 obtaining a valid conviction and perhaps in other extraordinary circumstances where
24 irreparable injury can be shown.” *Carden v. Montana*, 626 F.2d 82, 84 (9th Cir. 1980)
25 (quoting *Perez v. Ledesma*, 401 U.S. 82, 85 (1971)). Plaintiff has failed to show special or
26 extraordinary circumstances indicating that he will suffer irreparable harm if this Court
27 abstains from hearing his claims until after he has a chance to present them to the state
28

1 courts. *See Younger*, 401 U.S. at 45-46; *Carden*, 626 F.2d at 83-84. These are issues that
 2 should be raised in his criminal case, not here.

3 Fifth, the issue in Count Three relates to Plaintiff's public defender. A prerequisite
 4 for any relief under 42 U.S.C. § 1983 is a showing that the defendant has acted under the
 5 color of state law. An attorney representing a criminal defendant does not act under color
 6 of state law. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *see also Szijarto v.*
 7 *Legeman*, 466 F.2d 864, 864 (9th Cir. 1972) (per curiam) ("[A]n attorney, whether retained
 8 or appointed, does not act 'under color of' state law.").

9 Sixth, the issue in Count Four relates to the undersigned's ruling in the May 1, 2020
 10 Order. However, judges are absolutely immune from § 1983 and *Bivens* suits for damages
 11 for their judicial acts except when they are taken "in the 'clear absence of all jurisdiction.'" "*Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335,
 12 351 (1871)); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Against federal
 13 judges, absolute immunity also "extends to actions for declaratory, injunctive and other
 14 equitable relief." *Mullins v. United States Bankr. Ct. for the D. of Nev.*, 828 F.2d 1385,
 15 1394 (9th Cir. 1987). An act is "judicial" when it is a function normally performed by a
 16 judge and the parties dealt with the judge in his or her judicial capacity. *Stump*, 435 U.S.
 17 at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990).

18 Seventh, Plaintiff's assertions in Count Four are incorrect. In the document attached
 19 to his April 23, 2020 Complaint, Plaintiff sought to combine this case "with case CV-20-
 20 00598-PHX still pending." But that case was not pending; Judgment was entered on March
 21 30, 2020. And *Caraffa v. Arizona*, CV 20-00598-PHX-MTL (ESW), was not a criminal
 22 action; the United States Supreme Court has "consistently recognized that habeas corpus
 23 proceedings are civil in nature." *Hilton v. Braunschweig*, 481 U.S. 770, 776 (1987).

24

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27

1 **IT IS ORDERED:**

2 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 6) is **granted**.
3 (2) As required by the accompanying Order to the appropriate government
4 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee
5 of \$5.00.
6 (3) The First Amended Complaint (Doc. 5) is **dismissed** for failure to state a
7 claim pursuant to 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment
8 accordingly.
9 (4) The Clerk of Court must make an entry on the docket stating that the
10 dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).
11 (5) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)
12 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal
13 of this decision would be taken in good faith and certifies that an appeal would not be taken
14 in good faith for the reasons stated in the Order and because there is no arguable factual or
15 legal basis for an appeal.

16 Dated this 27th day of May, 2020.

17
18 Michael T. Liburdi
19
20 Michael T. Liburdi
21 United States District Judge
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**Additional material
from this filing is
available in the
Clerk's Office.**