

20-17217

Brittian Willie Young, #127930
ASPC - ARIZONA STATE PRISON COMPLEX - TUCSON
Whetstone Unit
P.O. Box 24402
Tucson, AZ 85734-4402

APPENDIX A

APPENDIX A ORDER OF U.S. COURT OF APPEALS TO DENY

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 15 2021

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

BRITTIAN WILLIE YOUNG,

Plaintiff-Appellant,

v.

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Named as
State of Arizona ADEQ, Motor Vehicle
Inspector; et al.,

Defendants-Appellees.

No. 20-17217

D.C. No.

2:20-cv-01721-DWL-JZB

District of Arizona,
Phoenix

ORDER

Before: WARDLAW and MILLER, Circuit Judges.

Appellant's motion to proceed in forma pauperis (Docket Entry No. 4) is denied because appellant has had three or more prior actions or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and appellant has not alleged imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Within 21 days after the date of this order, appellant shall pay \$505.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

No motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained.

If the appeal is dismissed for failure to comply with this order, the court will not entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees.

Briefing is suspended pending further order of this court.

20-17217

Brittian Willie Young, #127930
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Whetstone Unit
P.O. Box 24402
Tucson, AZ 85734-4402

APPENDIX B

APPENDIX B ORDER OF U.S. COURT OF APPEALS TO DISMISS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 17 2021

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

BRITTIAN WILLIE YOUNG,

Plaintiff - Appellant,

v.

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
Named as State of Arizona ADEQ,
Motor Vehicle Inspector; et al.,

Defendants - Appellees.

No. 20-17217

D.C. No. 2:20-cv-01721-DWL-JZB

U.S. District Court for Arizona,
Phoenix

ORDER

A review of the docket demonstrates that appellant has failed to respond to the January 15, 2021 order of this court.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to prosecute.

This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Tina S. Price
Deputy Clerk
Ninth Circuit Rule 27-7

Brittian Willie Young #127930
TUCSON-AZ-TUCSON-ASPC-WHETSTONE
WHETSTONE UNIT
P.O. BOX 24402
TUCSON, AZ 85734

APPENDIX C

APPENDIX C Order of U.S. District Court to dismiss #3 x

MIME-Version:1.0 From:azddb_responses@azd.uscourts.gov To:azddb_nefs@localhost.localdomain
Message-Id: Subject:Activity in Case 2:20-cv-01721-DWL--JZB Young v. Arizona Department of
Environmental Quality et al Order Content-Type: text/html

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U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 10/28/2020 at 12:51 PM MST and filed on 10/28/2020

Case Name: Young v. Arizona Department of Environmental Quality et al

Case Number: 2:20-cv-01721-DWL--JZB

Filer:

Document Number: 8

Docket Text:

ORDER: Plaintiff having failed to show cause for why the injunction proposed in the Court's September 17, 2020 order should not be imposed, the injunction described in that order is entered as set forth below. Brittian Willie Young is prohibited from making any further filings in cases CV 96-02009-PHX-PGR (BGS), CV 96-02010-PHX-PGR (BGS), CV 12-01319-PHX-SPL, CV 16-00961-PHX-JJT, CV 16-01348-PHX-ROS, CV 19-01729-PHX-DWL (JZB), CV 19-01730-PHX-DWL, or CV 20-01617-DGC (JZB). If Brittian Willie Young makes any further filings in these cases, the Court will not consider them, and the Clerk of Court will summarily strike them from the record. If Brittian Willie Young attempts to file any new civil rights action in this Court, he must include a declaration, signed under penalty of perjury, that the new filing is not related to his criminal conviction in Maricopa County Superior Court case #CR2016-005528. If the declaration indicates that the filing is related to Maricopa County Superior Court case #CR2016-005528, it shall include evidence that said conviction has been reversed, expunged, invalidated, or is otherwise not barred by Heck v. Humphrey, 512 U.S. 477 (1994). If Brittian Willie Young fails to include the required declaration, or if the declaration indicates that the action is related to Maricopa County Superior Court case #CR2016-005528 but does not include evidence that the conviction from that case has been reversed, expunged, or otherwise invalidated, the Court will not consider the new action and will summarily dismiss the action for failure to comply with this order. This action is dismissed, and the Clerk of Court must enter judgment accordingly. Signed by Judge Dominic W Lanza on 10/28/2020. (REK)

2:20-cv-01721-DWL--JZB Notice has been electronically mailed to:

2:20-cv-01721-DWL--JZB Notice will be sent by other means to those listed below if they are affected by this filing:

#3 y

Brittian Willie Young
#127930
TUCSON-AZ-TUCSON-ASPC-WHETSTONE
WHETSTONE UNIT
P.O. BOX 24402
TUCSON, AZ 85734

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=10/28/2020] [FileNumber=21268051
-0] [2f5ecc75f98d9b5533cf3e4978a2557df08f07df64dff03d3367419ce53a517ea
0efc75acf131fc8ab457f8bddfb98dc97a84b13784d3f2ac308e4e0e462bf0f]]

ASH

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

9 Brittian Willie Young,

10 Plaintiff,

11 v.

12 Arizona Department of Environmental
13 Quality, et al.,

14 Defendants.
15

No. CV 20-01721-PHX-DWL (JZB)

ORDER

16 **I. Background**

17 On March 13, 2019, Plaintiff Brittian Willie Young, who is confined in the Arizona
18 State Prison Complex-Tucson, filed a pro se civil rights complaint pursuant to 42 U.S.C.
19 § 1983 and an application to proceed *in forma pauperis*. See *Young v. Arizona Dep't of*
20 *Env't'l Quality*, No. CV 19-01729-PHX-DWL (JZB) (D. Ariz. 2019). In a June 5, 2019
21 Order in that action, the Court granted the application to proceed but dismissed the
22 complaint because Plaintiff had failed to state a claim. (Doc. 11 in CV 19-01729.) The
23 Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies
24 identified in the Order.

25 On June 17, 2019, Plaintiff filed a first amended complaint ("FAC"). (Doc. 13 in
26 CV 19-01729.) By Order dated October 9, 2019, the Court dismissed the FAC and the
27 action as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (Doc. 14 in CV 19-01729.)
28 Judgment was entered the same day. (Doc. 15 in CV 19-01729.)

#329

1 On June 22, 2020, Plaintiff appealed the dismissal to the Ninth Circuit. (Doc. 16 in
2 CV 19-01729.) By mandate issued August 14, 2020, the Ninth Circuit dismissed the appeal
3 for lack of jurisdiction because it was not timely filed. (Doc. 21 in CV 19-01729.)

4 On August 17, 2020, Plaintiff filed a new complaint, which was docketed as case
5 no. CV 20-01617-PHX-DGC (JZB). However, this “new” action was simply a photocopy
6 of the complaint from CV 19-01729, with an additional claim against the undersigned
7 based upon the undersigned’s dismissal of CV 19-01729. (Doc. 1 in CV 20-01617.)
8 Although the case was initially assigned to the undersigned, it was reassigned to Judge
9 David G. Campbell because Plaintiff had named the undersigned as a Defendant. (Doc. 5
10 in CV 20-01617.) By order dated August 21, 2020, Judge Campbell dismissed the
11 complaint and CV 20-01617-PHX-DGC (JZB) as duplicative of CV 19-01729 and barred
12 by *Heck*. (Doc. 6 in CV 20-01617.) Judgment was entered the same day. (Doc. 7 in CV
13 20-01617.)

14 On September 2, 2020, Plaintiff initiated the instant action by filing his latest
15 complaint. The complaint was identical to the complaint in CV 20-01617, with the
16 addition of a “new” claim against Judge Campbell based upon Judge Campbell’s dismissal
17 of CV 20-01617. In short, each time a judge in this Court dismisses one of Plaintiff’s
18 actions, Plaintiff simply files a new action, identical to the last, and adds a new “claim”
19 against the judge who dismissed the previous action. Accordingly, by order dated
20 September 17, 2020, the Court dismissed the complaint and ordered Plaintiff to show cause
21 for why an abusive litigant order should not be entered against him. On September 28,
22 2020, Plaintiff filed his response (Doc. 7). Plaintiff’s Response is largely incoherent,
23 repeats many of the arguments made in his previous complaints, and asserts that he “should
24 be able to move forward.”

25 **II. Discussion**

26 Federal courts have the responsibility to ensure that their limited resources “are
27 allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180,
28 184 (1989). “Flagrant abuse of the judicial process cannot be tolerated because it enables

one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *see also O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts have the inherent power to act to ensure that the business of the Court is conducted in an orderly and reasonable fashion. *See, e.g., Visser v. Supreme Court of the State of California*, 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to “regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *DeLong*, 912 F.2d at 1147 (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

Although the Court has the authority to enjoin abusive litigants from future access to the courts, that authority should be exercised only rarely. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing such an injunction, the Court must provide the abusive litigant with notice of the impending injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must also furnish an adequate record for review—one that includes “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed.” *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). Litigiousness is not enough; the court must consider “both the number and content of the filings.” *Id.* (quoting *In re Powell*, 851 F.2d at 431).

A. Need for an Injunction

1. Filing History

In addition to the instant case, Plaintiff has filed eight other cases in this Court.¹ As relevant to the Court’s intent to enter a vexatious litigant order, Plaintiff’s first allegations against Defendant “4909 Beverly LL” were made in CV 16-00961-PHX-JJT. That case was dismissed without prejudice on March 3, 2017, for failure to either pay the filing fee

¹ CV 96-02009-PHX-PGR (BGS); CV 96-02010-PHX-PGR (BGS); CV 12-01319-PHX-SPL; CV 16-00961-PHX-JJT; CV 16-01348-PHX-ROS; CV 19-01729-PHX-DWL (JZB); CV 19-01730-PHX-DWL; CV 20-01617-DGC (JZB).

1 or submit a complete application to proceed *in forma pauperis*.² In CV 16-01348-PHX-
2 ROS, Plaintiff named the Arizona Department of Child Safety (“DCS”) for the first time.
3 That case was removed from Maricopa County Superior Court and, after briefing on
4 Defendant’s motion to dismiss, was dismissed on June 24, 2016 after Plaintiff failed to
5 submit a proper amended complaint.³

6 On March 3, 2019, Plaintiff filed CV 19-01729-PHX-DWL (JZB). Simultaneously,
7 Plaintiff filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in CV 19-
8 01730-PHX-DWL (JZB), challenging his conviction for his attempted kidnapping of Judge
9 Flores. As noted above, Plaintiff’s allegations in CV 19-01729-PHX-DWL (JZB) were
10 related to his attempted “citizen[’]s arrest” of Judge Flores and his resultant encounters
11 with the Arizona criminal justice system. Accordingly, the action was dismissed by the
12 undersigned on October 9, 2019 because Defendants were immune from suit and the suit
13 was barred by *Heck*.

14 In the habeas action, CV 19-01730, after briefing and a report and recommendation
15 (“R&R”) by the assigned magistrate judge, the undersigned dismissed the petition on June
16 11, 2020. Thereafter, Plaintiff filed CV 20-01617-PHX-DGC (JZB). The allegations in
17 CV 20-01617-PHX-DGC (JZB) were identical to those in CV 19-01729-PHX-DWL
18 (JZB), with the exception of the new “claim” against the undersigned based on the
19 dismissal of cases CV 19-01729 and CV 19-01730. By order dated August 21, 2020, Judge
20 Campbell found that CV 20-01617-PHX-DGC (JZB) was largely duplicative of CV 19-
21 01729-PHX-DWL (JZB) and that, in any event, Plaintiff’s claims remained barred by
22 *Heck*.

23 On September 2, 2020, Plaintiff initiated the instant action. As recounted above,
24 the instant action is a combination of the claims originally raised in CV 16-00961-PHX-
25 JJT, expanded by CV 19-01729-PHX-DWL (JZB), and now adding a “new” claim against
26 Judge Campbell based on his dismissal of CV 20-01617-PHX-DGC (JZB).

27
28 ² See Doc. 13 in CV 16-00961-PHX-JJT.

³ See Doc. 11 in CV 16-01348-PHX-ROS.

1 While this volume of cases is relatively light, the increasingly repetitive nature of
2 Plaintiff's claims weighs in favor of an abusive litigant order.

3 2. Frivolous and Harassing Nature

4 As recounted above, Plaintiff's last three filings have been identical, with the
5 exception that each time he has simply added a new "claim" against the judge who
6 dismissed the previous action. Further, Plaintiff indicates in his response that the
7 "Judges"—apparently in reference to the undersigned, Judge Campbell, and the assigned
8 magistrate judge in Plaintiff's habeas corpus action—engaged in a "malicious and corrupt
9 conspiracy act" and he now considers them "bound" and "not immune[] from all the
10 violations that have been set in place." (Doc. 7 at 4). This suggests that Plaintiff intends
11 to continue filing repetitive actions. In short, Plaintiff's filing pattern weighs heavily in
12 favor of an abusive litigant order.

13 B. Type of Injunctive Order

14 An order enjoining an abusive litigant from future access to the courts must be
15 "narrowly tailored to closely fit the specific vice encountered." *DeLong*, 912 F.2d at 1148.
16 Here, that vice is Plaintiff's apparent attempt to force reconsideration of his claims—which
17 have already been found to be legally barred—by simply re-filing the action and naming
18 the previous judge as a new defendant. As such, the proposed injunctive order will be
19 limited to prohibiting similar filings by Plaintiff in the future and will not restrict Plaintiff's
20 ability to bring claims unrelated to those in his offending actions. For example, the Court
21 will not enjoin Plaintiff from bringing suit regarding any allegedly unconstitutional
22 conditions of his confinement.

23 Further, the Court sees no reason to impose monetary penalties against Plaintiff at
24 this time. Plaintiff is currently incarcerated and has sought to proceed *in forma pauperis*
25 in each of the previous actions. Although *in forma pauperis* status is a privilege, not a
26 right, it seems possible that, given Plaintiff's professed indigency, a pre-filing monetary
27 sanction would effectively bar him from all access to the courts. The Court will not do so
28 at this time.

1 **C. Abusive Litigant Order**

2 The Court's September 17, 2020 order served as notice of the Court's intent to
3 impose a vexatious litigant order against Plaintiff. Plaintiff was permitted an opportunity
4 to show cause for why such an order should not be entered and has failed to persuade the
5 Court that an abusive litigant order is not warranted. Accordingly, the Court will enter the
6 injunction proposed in its September 17, 2020 Order, with the following terms:

7 1. Brittian Willie Young is prohibited from making any
8 further filings in cases CV 96-02009-PHX-PGR (BGS), CV
9 96-02010-PHX-PGR (BGS), CV 12-01319-PHX-SPL, CV 16-
10 00961-PHX-JJT, CV 16-01348-PHX-ROS, CV 19-01729-
11 PHX-DWL (JZB), CV 19-01730-PHX-DWL, or CV 20-
12 01617-DGC (JZB). If Brittian Willie Young makes any further
filings in these cases, the Court will not consider them, and the
Clerk of Court will summarily strike them from the record.

13 2. If Brittian Willie Young attempts to file any new civil
14 rights action in this Court, he must include a declaration,
15 signed under penalty of perjury, that the new filing is not
16 related to his criminal conviction in Maricopa County Superior
17 Court case #CR2016-005528. If the Declaration indicates that
18 the filing is related to Maricopa County Superior Court case
19 #CR2016-005528, it shall include evidence that said
20 conviction has been reversed, expunged, invalidated, or is
21 otherwise not barred by *Heck v. Humphrey*, 512 U.S. 477
22 (1994). If Brittian Willie Young fails to include the required
23 declaration, or if the declaration indicates that the action is
related to Maricopa County Superior Court case #CR2016-
005528 but does not include evidence that the conviction from
that case has been reversed, expunged, or otherwise
invalidated, the Court will not consider the new action and will
summarily dismiss the action for failure to comply with this
order.

24 **IT IS ORDERED:**

25 (1) Plaintiff having failed to show cause for why the injunction proposed in the
26 Court's September 17, 2020 order should not be imposed, the injunction described in that
27 order is entered as set forth below.
28

1 (2) Brittian Willie Young is prohibited from making any further filings in cases
2 CV 96-02009-PHX-PGR (BGS), CV 96-02010-PHX-PGR (BGS), CV 12-01319-PHX-
3 SPL, CV 16-00961-PHX-JJT, CV 16-01348-PHX-ROS, CV 19-01729-PHX-DWL (JZB),
4 CV 19-01730-PHX-DWL, or CV 20-01617-DGC (JZB). If Brittian Willie Young makes
5 any further filings in these cases, the Court will not consider them, and the Clerk of Court
6 will summarily strike them from the record.

7 (3) If Brittian Willie Young attempts to file any new civil rights action in this
8 Court, he must include a declaration, signed under penalty of perjury, that the new filing is
9 not related to his criminal conviction in Maricopa County Superior Court case #CR2016-
10 005528. If the declaration indicates that the filing *is* related to Maricopa County Superior
11 Court case #CR2016-005528, it shall include evidence that said conviction has been
12 reversed, expunged, invalidated, or is otherwise not barred by *Heck v. Humphrey*, 512 U.S.
13 477 (1994). If Brittian Willie Young fails to include the required declaration, or if the
14 declaration indicates that the action is related to Maricopa County Superior Court case
15 #CR2016-005528 but does not include evidence that the conviction from that case has been
16 reversed, expunged, or otherwise invalidated, the Court will not consider the new action
17 and will summarily dismiss the action for failure to comply with this order.

18 (4) This action is **dismissed**, and the Clerk of Court must enter judgment
19 accordingly.

20 Dated this 28th day of October, 2020.

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23 
24 **Dominic W. Lanza**
25 **United States District Judge**
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MIME-Version:1.0 From:azddb_responses@azd.uscourts.gov To:azddb_nefs@localhost.localdomain
Message-Id: Subject:Activity in Case 2:20-cv-01721-DWL--JZB Young v. Arizona Department of
Environmental Quality et al Clerks Judgment Content-Type: text/html

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U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 10/28/2020 at 12:55 PM MST and filed on 10/28/2020

Case Name: Young v. Arizona Department of Environmental Quality et al

Case Number: 2:20-cv-01721-DWL--JZB

Filer:

WARNING: CASE CLOSED on 10/28/2020

Document Number: 9

Docket Text:

CLERK'S JUDGMENT – Pursuant to the Court's order filed September 17, 2020, judgment is entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and complaint and action are dismissed for failure to comply with the Court's order. (REK)

2:20-cv-01721-DWL--JZB Notice has been electronically mailed to:

2:20-cv-01721-DWL--JZB Notice will be sent by other means to those listed below if they are affected by this filing:

Brittian Willie Young

#127930

TUCSON-AZ-TUCSON-ASPC-WHETSTONE

WHETSTONE UNIT

P.O. BOX 24402

TUCSON, AZ 85734

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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-0] [694edac8df131b5e6c3b59391b34dcf2baec8c5f84d01be822b47039a51dc5985
b3dc4d324612967cc15e50b1bc3ad39246fdcf2500a6b8cba465271da6695f0]]

#3 hh

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brittian Willie Young,
10 Plaintiff,

11 v.

12 Arizona Department of Environmental
13 Quality, et al.,
14 Defendants.

NO. CV-20-01721-PHX-DWL (JZB)

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
18 September 17, 2020, judgment is entered in favor of defendant and against plaintiff.
19 Plaintiff to take nothing, and complaint and action are dismissed for failure to comply
20 with the Court's order.

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

October 28, 2020

23 By s/ Rebecca Kobza
24 Deputy Clerk
25
26
27
28

Case: 2:20cv1721

Brittian Willie Young #127930
TUCSON-AZ-TUCSON-ASPC-WHETSTONE
WHETSTONE UNIT
P.O. BOX 24402
TUCSON, AZ 85734

APPENDIX D

APPENDIX D Order of U.S. District Court to show cause
3 *jj*

MIME-Version:1.0 From:azddb_responses@azd.uscourts.gov To:azddb_nefs@localhost.localdomain
Message-Id: Subject:Activity in Case 2:20-cv-01721-DWL--JZB Young v. Arizona Department of
Environmental Quality et al Order to Show Cause Content-Type: text/html

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U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 9/17/2020 at 5:20 PM MST and filed on 9/17/2020

Case Name: Young v. Arizona Department of Environmental Quality et al

Case Number: 2:20-cv-01721-DWL--JZB

Filer:

Document Number: 6

Docket Text:

ORDER AND ORDER TO SHOW CAUSE: Plaintiff's Application to Proceed In Forma Pauperis [2] is denied. Plaintiff's Complaint [1] is dismissed without leave to amend. Within 30 DAYS of the date this order is filed, Plaintiff must SHOW CAUSE, in writing, for why the injunction proposed in this Order should not be imposed. Plaintiff's response to this Order must be limited to this issue. If Plaintiff fails to timely respond to this Order or fails to persuade the Court that the proposed injunction should not be entered, the Court will issue an injunction with the terms set forth in this Order. Signed by Judge Dominic W Lanza on 9/17/2020. (REK)

2:20-cv-01721-DWL--JZB Notice has been electronically mailed to:

2:20-cv-01721-DWL--JZB Notice will be sent by other means to those listed below if they are affected by this filing:

Brittian Willie Young
#127930
TUCSON-AZ-TUCSON-ASPC-WHETSTONE
WHETSTONE UNIT
P.O. BOX 24402
TUCSON, AZ 85734

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

#311

ASH

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

Brittian Willie Young,
Plaintiff,

v.

Arizona Department of Environmental
Quality, et al.,
Defendants.

No. CV 20-01721-PHX-DWL (JZB)

ORDER

and

ORDER TO SHOW CAUSE

I. Background

On March 13, 2019, Plaintiff Brittian Willie Young, who is confined in the Arizona State Prison Complex-Tucson, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed In Forma Pauperis. In Order to facilitate consideration of the filings, the Clerk of Court opened action no. CV 19-01729-PHX-DWL (JZB). In a June 5, 2019 Order in that action, the Court granted the Application to Proceed, but dismissed the Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

On June 17, 2019, Plaintiff filed a First Amended Complaint. By Order dated October 9, 2019, the Court dismissed the First Amended Complaint and CV 19-01729-PHX-DWL (JZB) as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Judgment was

#3nn

1 entered the same day.

2 On June 22, 2020, Plaintiff appealed the dismissal to the Ninth Circuit Court of
3 Appeals. By Mandate issued August 14, 2020, the Ninth Circuit dismissed the appeal for
4 lack of jurisdiction because it was not timely filed.

5 On August 17, 2020, Plaintiff filed a new Complaint, which was docketed as case
6 no. CV 20-01617-PHX-DGC (JZB). However, this “new” action was simply a photocopy
7 of the Complaint from CV 19-01729, with an additional claim against the undersigned
8 based upon the undersigned’s dismissal of CV 19-01729. Although the case was initially
9 assigned to the undersigned, it was reassigned to Judge David G. Campbell because
10 Plaintiff had named the undersigned. By Order dated August 21, 2020, Judge Campbell
11 dismissed the Complaint and CV 20-01617-PHX-DGC (JZB) as duplicative of CV 19-
12 01729 and barred by *Heck*. Judgment was entered the same day.

13 On September 2, 2020, Plaintiff initiated the instant action by filing his latest
14 Complaint (Doc. 1) and an Application to Proceed In Forma Pauperis (Doc. 2). Again,
15 however, the Complaint is identical to that from CV 20-01617, with the addition of a “new”
16 claim against Judge Campbell based upon Judge Campbell’s dismissal of CV 20-01617.
17 In short, each time a Judge in this Court dismisses one of Plaintiff’s actions, Plaintiff simply
18 files a new action, identical to the last, and adds a new “claim” against the judge who
19 dismissed the previous action. Accordingly, for the reasons set forth below, the
20 undersigned declines to recuse from this matter, will dismiss the Complaint, and will order
21 Plaintiff to show cause why an abusive litigant order should not be issued against him.

22 **II. Recusal**

23 As noted, Plaintiff has named the undersigned and several other judges as
24 Defendants in this action. Ordinarily, when a judge assigned to the case is named as a
25 party, the judge would recuse himself sua sponte pursuant to 28 U.S.C. § 455, which
26 requires a judge to recuse himself “in any proceeding in which his impartiality might be
27 reasonably questioned” or when he is “a party to the proceeding.” 28 U.S.C. § 455(a) and
28 (b)(5)(i). However, this case is not ordinary.

1 When a litigant becomes unhappy with a judge's rulings in a case, a litigant might
 2 seek to force the judge to recuse himself by filing a lawsuit against the judge. But a "judge
 3 is not disqualified merely because a litigant sues or threatens to sue him.' Such an easy
 4 method for obtaining disqualification should not be encouraged or allowed." *Ronwin v.*
 5 *State Bar of Arizona*, 686 F.2d 692, 701 (9th Cir. 1981) (citation omitted), *rev'd on other*
 6 *grounds sub nom. Hoover v. Ronwin*, 466 U.S. 558 (1984). "[A] judge is not disqualified
 7 by a litigant's suit or threatened suit against him, or by a litigant's intemperate and
 8 scurrilous attacks.'" *United States v. Sutcliffe*, 505 F.3d 944, 958 (9th Cir. 2007) (quoting
 9 *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986)).

10 Similarly, "[w]here a claim against the undersigned judge is so wholly frivolous that
 11 there is no jurisdiction, the assigned judge should be able to decline to recuse and proceed
 12 with dismissing the case." *Snegirev v. Sedwick*, 407 F. Supp. 2d 1093, 1095-96 (D. Alaska
 13 2006); *see also Reddy v. O'Connor*, 520 F. Supp. 2d 124, 131 (D.D.C. 2007) ("recusal is
 14 not required where the claim asserted is 'wholly frivolous' or a litigant has named a judicial
 15 officer as a defendant to force [her] out of the case and hence obtain assignment of a judge
 16 the litigant considers more desirable." (quoting *Snegirev*, 407 F. Supp. 2d at 1095-96)).

17 The Court lacks subject-matter jurisdiction over a claim that is "wholly insubstantial
 18 and frivolous." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998). An
 19 action under 42 U.S.C. § 1983 may be dismissed as frivolous "where the defense is
 20 complete and obvious from the face of the pleadings." *Franklin v. Murphy*, 745 F.2d 1221,
 21 1228 (9th Cir. 1984). Such claims include those in which "it is clear that the defendants
 22 are immune from suit." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *see also Snegirev*,
 23 407 F. Supp. 2d at 1097 (claim precluded by judicial immunity was frivolous).

24 Plaintiff's claim against the undersigned is based on the undersigned's rulings in
 25 Plaintiff's prior cases and has already been found to be barred. (*See* Doc. 6 in CV 20-
 26 01617-PHX-DGC (JZB)). As to the rulings in those cases, the undersigned is protected by
 27 judicial immunity. Judges are absolutely immune from § 1983 and *Bivens* suits for
 28 damages 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, 351 (1871)); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). An act is “judicial” when it is a function normally performed by a judge and the parties dealt with the judge in his or her judicial capacity. *Stump*, 435 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). This immunity attaches even if the judge is accused of acting maliciously and corruptly, *Pierson v. Ray*, 386 U.S. 547, 554 (1967), or of making grave errors of law or procedure. See *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988). The Court finds that Plaintiff’s claims against the undersigned, and the other judges on this Court, are precluded by judicial immunity and are frivolous.¹ Thus, the Court declines to recuse itself.

III. Statutory Screening of Prisoner Complaints

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

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

“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content

¹ As discussed below, Plaintiff’s claims in Counts One through Five are barred by the doctrine of collateral estoppel.

1 that allows the court to draw the reasonable inference that the defendant is liable for the
 2 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 3 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 4 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 5 allegations may be consistent with a constitutional claim, a court must assess whether there
 6 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

7 But as the Ninth Circuit has instructed, courts must “continue to construe *pro se*
 8 filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint [filed
 9 by a pro se prisoner] ‘must be held to less stringent standards than formal pleadings drafted
 10 by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

11 **IV. Complaint**

12 As with his prior actions, Plaintiff again names as Defendants the Arizona
 13 Department of Environmental Quality (“ADQ”); the Arizona Department of Child
 14 Safety (“DCS”); the Arizona Department of Corrections (“ADC”); former ADC Director
 15 Charles L. Ryan; current ADC Director David Shinn; Arizona Attorney General Mark
 16 Brnovich; Maricopa County Superior Court Judge Lisa Daniel Flores; an individual named
 17 Carol Miller, who Plaintiff refers to as a “property manager”; an entity named “4909
 18 Beverly LLC,” which Plaintiff describes as a “commercial property holder/manager”;
 19 United States Magistrate Judge Camille D. Bibles; and United States District Court Judges
 20 Dominic W. Lanza and David G. Campbell. Plaintiff seeks \$95,000,000,000.00 in
 21 monetary relief.

22 Plaintiff’s allegations stem from his attempted “citizen[’]s arrest” of Judge Flores
 23 and his resultant encounters with the Arizona criminal justice system.² Plaintiff’s
 24 allegations in Counts One, Two, and Three are identical to those raised in CV 19-01729,
 25 and will not be repeated here in the interest of brevity. Plaintiff’s claims in Counts Four
 26

27 ² See Maricopa County Superior Court, case #CR2016-005528 (available at
 28 <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber=CR2016-005528>) (last visited Aug. 18, 2020). See also *Young v. Ryan*, CV 19-01730-PHX-DWL (CDB) (D. Ariz. 2019).

1 and Five are identical to those raised in CV 20-01617, and likewise will not be repeated
2 here in the interest of brevity.

3 Plaintiff directs his new "claim" in Count Six against Judge Campbell, alleging that
4 the exhibited document, formatted and titled "Open Entry Services Move to
5 Strike," which is the active contract equipt [sic] with a live "Notice to Arrest"
6 retaining the authority to have those who choose to interfere with recovery
7 efforts or obstruct legal efforts of justice to be prosecuted as "Opposition"
8 where one was the Plaintiff in CV-01617-DGC-JZB applied as law.

9 Plaintiff further alleges that Judge Campbell

10 had knowledge of legal intent for prosecution of "Opposition" as he admits
11 in "Order" and has admitted that [Plaintiff] has legitimate claims, but has
12 barred them because of his "belief" where Judge Campbell saw active
13 contract "Open Entry Services Move to Strike" and new [sic] [Plaintiff's]
14 complaint contained so much factual matter that that can only be taken as
15 true and plausible in "Notice to Arrest," he has clearly obstructed the
16 prosecution in federal civil rights complaint.

17 **V. Failure to State a Claim**

18 As noted, Plaintiff's allegations in Counts One, Two, and Three are identical those
19 raised in CV 19-01729-PHX-DWL (JZB). As such, for the same reasons as those set forth
20 in the Court's October 9, 2019 Order in CV 19-01729, Counts One, Two, and Three are
21 dismissed. Further, and as also noted, Plaintiff's claims in Counts Four and Five are
22 identical to those raised in CV 20-01617-PHX-DGC (JZB), and will thus be dismissed for
23 the same reasons as those set forth in the Court's August 21, 2020 Order in CV 20-01617.

24 Additionally, Plaintiff is collaterally estopped from re-litigating Counts One
25 through Five in this action. The purpose of collateral estoppel is to limit the number of
26 times a party can be vexed by a claim or issue, and to promote efficiency in the judicial
27 system by putting an end to litigation over a particular claim or legal issue. *Gilbert v. Ben-*
28 *Asher*, 900 F.2d 1407, 1410 (9th Cir.1990). Under the doctrine of collateral estoppel, once
a court has decided an issue of fact or law, that decision normally precludes relitigation of
the issue in a subsequent action involving the parties or persons in privity with the parties
to the first case. *In Re Palmer*, 207 F.3d 566, 568 (9th Cir.2000); *Hydranautics v. Filmtec*
Corp., 204 F.3d 880, 885 (9th Cir. 2000). Collateral estoppel is appropriate when the
following elements are met: 1) there was a full and fair opportunity to litigate the issue in

1 the previous action; 2) the issue was actually litigated in that action; 3) the issue was settled
 2 as a result of a final judgment in that action; and 4) the person or persons against whom
 3 collateral estoppel is asserted in the present action were a party or were in privity with a
 4 party in the previous action. *Hydranautics*, 204 F.3d at 885.

5 As noted, Plaintiff has now filed identical claims in multiple actions against the
 6 same Defendants. These claims have been finally decided against him on the law each
 7 time, yet he has realleged them verbatim against the same Defendants in this action.
 8 Accordingly, collateral estoppel of Plaintiff's claims in Counts One through Five is
 9 appropriate here.

10 Finally, and as discussed above, judges are absolutely immune from § 1983 and
 11 *Bivens* suits for damages for their judicial acts except when they are taken "in the 'clear
 12 absence of all jurisdiction.'" *Stump*, 435 U.S. at 356-57 (quoting *Bradley*, 80 U.S. at 351);
 13 *Ashelman*, 793 F.2d at 1075 (9th Cir. 1986). An act is "judicial" when it is a function
 14 normally performed by a judge and the parties dealt with the judge in his or her judicial
 15 capacity. *Stump*, 435 U.S. at 362; *Crooks*, 913 F.2d at 700. Plaintiff's claims in Count Six
 16 clearly implicate Judge Campbell's ruling in case CV 20-01617-PHX-DGC (JZB).
 17 Accordingly, Plaintiff's claim in Count Six is precluded by judicial immunity and is
 18 frivolous. Accordingly, the Complaint will be dismissed.

19 **VI. Abusive Litigant Warning and Order to Show Cause**

20 Federal courts have the responsibility to ensure that their limited resources "are
 21 allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180,
 22 184 (1989). "Flagrant abuse of the judicial process cannot be tolerated because it enables
 23 one person to preempt the use of judicial time that properly could be used to consider the
 24 meritorious claims of other litigants." *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th
 25 Cir. 1990); *see also O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts
 26 have the inherent power to act to ensure that the business of the Court is conducted in an
 27 orderly and reasonable fashion. *See e.g., Visser v. Supreme Court of the State of California*,
 28 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to "regulate

the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *DeLong*, 912 F.2d at 1147 (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

Although the Court has the authority to enjoin abusive litigants from future access to the courts, that authority should be exercised only rarely. *Molski v. Evergreen DynastyCorp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing such an injunction, the Court must provide the abusive litigant with notice of the impending injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must also furnish an adequate record for review—one that includes “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed.” *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). Litigiousness is not enough; the court must consider “both the number and content of the filings.” *Id.* (quoting *In re Powell*, 851 F.2d at 431).

A. Need for an Injunction

1. Filing History

In addition to the instant case, Plaintiff has filed eight other cases in this Court.³ As relevant to the Court’s intent to enter a vexatious litigant order, Plaintiff’s first allegations against Defendant “4909 Beverly LL” were made in CV 16-00961-PHX-JJT. That case was dismissed without prejudice on March 3, 2017, for failure to either pay the filing fee or submit a complete Application to Proceed In Forma Pauperis.⁴ In CV 16-01348-PHX-ROS, Plaintiff named the Arizona Department of Child Safety for the first time. That case was removed from Maricopa County Superior Court, and, after briefing on Defendant’s

³ CV 96-02009-PHX-PGR (BGS); CV 96-02010-PHX-PGR (BGS); CV 12-01319-PHX-SPL; CV 16-00961-PHX-JJT; CV 16-01348-PHX-ROS; CV 19-01729-PHX-DWL (JZB); CV 19-01730-PHX-DWL; CV 20-01617-DGC (JZB).

⁴ See Doc. 13 in CV 16-00961-PHX-JJT.

1 exception that each time he has simply added a new “claim” against the Judge who
 2 dismissed the previous action. This filing pattern weighs heavily in favor of an abusive
 3 litigant order.

4 **B. Type of Injunctive Order**

5 An order enjoining an abusive litigant from future access to the courts must be
 6 “narrowly tailored to closely fit the specific vice encountered.” *DeLong*, 912 F.2d at 1148.
 7 Here, that vice is Plaintiff’s apparent attempt to force consideration of his claims—which
 8 have already been found to be legally barred—by simply re-filing the action and naming
 9 the previous Judge as a new Defendant. As such, the proposed injunctive order will be
 10 limited to prohibiting similar filings by Plaintiff in the future. It will not restrict Plaintiff’s
 11 ability to bring claims unrelated to those in his offending actions. For example, the Court
 12 will not enjoin Plaintiff from bringing suit regarding any allegedly unconstitutional
 13 conditions of his confinement.

14 Further, the Court sees no reason to impose monetary penalties against Plaintiff at
 15 this time. Plaintiff is currently incarcerated and that he has sought to proceed *in forma*
 16 *pauperis* in each of the actions he has brought to this Court. Although *in forma pauperis*
 17 status is a privilege, not a right, it seems possible that, given Plaintiff’s professed indigency,
 18 a pre-filing monetary sanction would effectively bar him from all access to the courts. The
 19 Court will not do so at this time.

20 **C. Notice and Opportunity to Show Cause**

21 This Order serves as notice of the Court’s intent to impose a vexatious litigant order
 22 against Plaintiff. The Court will permit Plaintiff an opportunity to show cause in writing
 23 why such an injunction should not be imposed. Plaintiff’s response to this Order **MUST**
 24 **BE LIMITED TO THIS ISSUE** and must be filed within **30 DAYS** of the date this Order
 25 is filed.

26 If Plaintiff fails to timely respond to this Order or fails to persuade the Court that an
 27 injunction should not be imposed, the Court will enter a vexatious litigant injunction with
 28 the following terms:

2. If Brittian Willie Young attempts to file any new civil rights actions in this Court, he must include therewith a Declaration, signed under penalty of perjury, that the new filing is not related to his criminal conviction in Maricopa County Superior Court case #CR2016-005528. If the Declaration indicates that the filing *is* related to Maricopa County Superior Court case #CR2016-005528, it shall include therewith evidence that said conviction has been reversed, expunged, invalidated, or is otherwise not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). If Brittian Willie Young fails to include the required Declaration, or if the Declaration indicates that the action is related to Maricopa County Superior Court case #CR2016-005528 but does not include evidence that the case has been reversed, expunged, or otherwise invalidated, the Court will not consider the new action and will summarily dismiss the action for failure to comply with this Order.

- (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is **denied**.
- (2) Plaintiff's Complaint (Doc. 1) is **dismissed** without leave to amend.
- (3) Within **30 DAYS** of the date this order is filed, Plaintiff must **SHOW CAUSE**, in writing, for why the injunction proposed in this Order should not be imposed. Plaintiff's response to this Order must be **limited to this issue**.

Dated this 17th day of September, 2020.

#3 xx