

APPENDIX-A

Loggins v. Pilshaw, 838 Fed. Appx. 323

Copy Citation

United States Court of Appeals for the Tenth Circuit

December 1, 2020, Filed

No. 20-3007

Reporter

838 Fed. Appx. 323 * | 2020 U.S. App. LEXIS 37486 **

KEVIN D. LOGGINS, SR., Plaintiff - Appellant, v. REBECCA L. PILSHAW, District Court Judge, Sedgwick County District Court; DIANA NICHOLS, Court Reporter, Sedgwick County District Court; DAVID KAUFMAN, Assistant District Attorney, Sedgwick County District Attorney Office; LOU ANN HALE, Court Reporter, Sedgwick County District Court; ERIC R. YOST, District Court Judge, Sedgwick County District Court; J. PATRICK WALTER, District Court Judge, Sedgwick County District Court; ANTHONY J. POWELL, JR., District Court Judge, Sedgwick County District Court; PAUL W. CLARK, District Court Judge, Sedgwick County District Court; JAMES R. FLEETWOOD, Chief Judge, Sedgwick County District Court; HENRY W. GREEN, Judge, Kansas Court of Appeals; (FNU) LEWIS, Judge, Kansas Court of Appeals; JOHN J. BUKATY, District Court Judge; MELISSA T. STRANDRIDGE, Judge, Kansas Court of Appeals; STEPHEN D. HILL, Judge, Kansas Court of Appeals; PATRICK D. MCANANY, Judge, Kansas Court of Appeals; (FNU) BRAZIL, Retired Judge, Kansas Court of Appeals; G. GORDON ATCHESON, Judge, Kansas Court of Appeals; THOMAS MALONE, Judge, Kansas Court of Appeals; (FNU) ELLIOTT, Judge, Kansas Court of Appeals; (FNU) WAHL, Judge, Kansas Court of Appeals; (FNU) GREENE, Judge, Kansas Court of Appeals; MICHAEL B. BUSER, Judge, Kansas Court of Appeals; STEVEN A. LEBEN, Judge, Kansas Court of Appeals; KATHRYN A. GARDNER, Judge, Kansas Court of Appeals; BERNADINE LAMBRERAS, Clerk of the Court, Sedgwick County District Court; LAURA KELLY, Governor, State of Kansas; DAVID M. UNRUH, Sedgwick County Commissioner; TIM R. NORTON, Sedgwick County Commissioner; KARL PETERJOHN, Sedgwick County Commissioner; RICHARD RANZAU, Sedgwick County Commissioner; RICHARD A. EUSON, Sedgwick County Counselor; JEFF EASTER, Sedgwick County Sheriff; ROGER WERHOLTZ, Interim Secretary of Corrections, Kansas Department of Corrections; DOUGLAS SHIMA, Clerk of the Court, Kansas Court of Appeals; WARREN WILBERT, District Court Judge, Sedgwick County District Court; SAM CROW, U.S. District Court Judge, State of Kansas; DALE SAFFELS, former U.S. District Court Judge, State of Kansas; RICHARD D. ROGERS, U.S. District Court Judge, State of Kansas, Defendants - Appellees.

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1
GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History:

[**1] (D.C. No. 5:18-CV-03254-DDC). (D. Kan.).

Loggins v. Pilshaw, 2020 U.S. Dist. LEXIS 6564, 2020 WL 224542 (D. Kan., Jan. 15, 2020)

Core Terms

immunity, district court, damages, sentence, invalid, affirmative defense, recuse, quasi-judicial, prosecutorial, imprisonment, convictions, aggravated, grounds, motions

Counsel: KEVIN D. LOGGINS, SR., Plaintiff - Appellant, Pro se, Hutchinson, KS.

Judges: Before HARTZ, McHUGH, and CARSON, Circuit Judges.

Opinion by: Harris L Hartz

Opinion

[*325] ORDER AND JUDGMENT*1 "

Kevin D. Loggins Sr., a Kansas prisoner proceeding pro se, appeals from the district court's dismissal of his claims brought under 42 U.S.C. § 1983 and the court's denial of various motions. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND & PROCEDURAL HISTORY

"Loggins is a prisoner in the custody of the Kansas Department of Corrections (KDOC). He was sentenced in 1996 to a prison term of 678 months "based on his Kansas state convictions for aggravated robbery, aggravated kidnaping, aggravated burglary, aggravated sexual battery, and criminal possession of a firearm," all arising out of "two residential armed robberies in 1995." Loggins v. Hannigan, 45 F. App'x 846, 848 (10th Cir. 2002).

In September 2018, Loggins filed suit under 42 U.S.C. § 1983, raising claims related to that conviction. His core allegations are as follows: Sedgwick County (Kansas) District Judge Rebecca L. Pilshaw, who presided over his prosecution, "abandon[ed] her color as a neutral, detached and impartial adjudicator and became an advocate and partisan for the prosecutor[']s case," R. vol. 1 at 9, when she [**2] added a charge of aggravated sexual battery to the criminal complaint, despite the prosecution "declin[ing]" to add such a charge on its own, id. A different judge arraigned him later that day on the new charge, although the amended criminal complaint had not yet been filed and Loggins was not present for that arraignment. After trial, Judge Pilshaw and her court reporter "sploitated" (i.e., spoliated) the record to conceal Judge Pilshaw's advocacy, and the "sploitated portion of the record was not made available" to Loggins until 2003. Id. at 17. Also, the court reporter for the arraignment never produced her transcripts, despite certifying to the Kansas Court of Appeals that she had.

Based on these accusations, Loggins sued Judge Pilshaw, the two court reporters, the Sedgwick County clerk of court, the assistant district attorney who prosecuted him, the county sheriff who delivered him into KDOC custody, the secretary of KDOC, the clerk of the Kansas Court of Appeals, the governor of Kansas, and apparently every state and federal judge who worked on his direct appeal, postconviction motions, postconviction appeals, and federal habeas proceedings. Loggins claims that all these defendants participated [**3] in or acted upon "void judgments" [*326] against him, given "the structu[r]al defect in the case [apparently referring to Judge Pilshaw's alleged bias, as evidenced by her sua sponte insertion of the sexual battery charge] and the trial court[']s failure to properly invoke the court[']s jurisdiction [referring to his arraignment in absentia on a not-yet-filed amended complaint]." *Id.* at 18. He also sued the Sedgwick County commissioners and county attorney, alleging they participated in creating a policy that led to "destruction of the documents which could establish that plaintiff's rights [were] violated." *Id.* at 14. He did not elaborate on the nature of these documents or the circumstances of their destruction.

Loggins claimed violations of his Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendment rights, and the Kansas Bill of Rights. He requested monetary damages from various defendants, "injunctive relief . . . to release [him] from the false imprisonment," and a declaration that his convictions are "nullities." *Id.* at 25.

Acting under 28 U.S.C. § 1915A(a), the district court screened Loggins's amended complaint and dismissed the case on the following grounds:

- Loggins cannot seek release from confinement—a habeas remedy—through a § 1983 action;
- most of the defendants are protected by immunity: [**4] the Eleventh Amendment bars relief to the extent Loggins seeks damages from a state official in his or her official capacity; judicial immunity bars relief against the federal and state judges named as defendants; prosecutorial immunity bars relief against the assistant district attorney who prosecuted him; and quasi-judicial immunity bars relief against the sheriff who transported him to KDOC custody, and against the KDOC secretary;
- Loggins cannot seek damages for his allegedly unlawful imprisonment without first invalidating his sentence through other means (such as habeas).

In light of the dismissal on these grounds, the court denied Loggins's motions for summary and default judgment as moot. It also denied his motion to change venue, a motion for a temporary restraining order and preliminary injunction, a motion for hearing, a motion to recuse the district judge, and various motions seeking the status of his case.

II. ANALYSIS

A. Screening Disposition (28 U.S.C. § 1915A)

1. Legal Standards

Section 1915A requires the federal district courts to "review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The court is to "identify cognizable [**5] claims or dismiss the complaint, or any portion of the complaint, if the complaint—(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b).

"We review de novo a § 1915A dismissal for failure to state a claim. See Young v. Davis, 554 F.3d 1254, 1256 (10th Cir. 2009). This court has never stated an explicit standard for reviewing § 1915A dismissals based on immunity. \ "Outside the § 1915A context, however, we review de novo a district court's determination regarding each of the immunities at issue here. See Arbogast v. Kan., Dep't of Labor, 789 F.3d 1174, 1181 (10th Cir. 2015) (Eleventh Amendment); Crowe & Dunlevy, P.C. v. Stidham, 640 F.3d 1140, 1153 (10th Cir. 2011) (judicial); Guttman v. Khalsa, 446 F.3d 1027, 1033 [*327] (10th Cir. 2006) (prosecutorial and quasi-judicial). We see no reason to do otherwise in the § 1915A context.

2. Application

"The district court's first ground for dismissal was the rule of Preiser v. Rodriguez: "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus," 411 U.S. 475, 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). The ruling was correct. \ "Preiser forecloses Loggins's § 1983 claims seeking an injunction ordering his release from prison and a declaratory judgment that his convictions [**6] were nullities. See Wilkinson v. Dotson, 544 U.S. 74, 81, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005); Duncan v. Gunter, 15 F.3d 989, 991 (10th Cir. 1994).

The district court's other two grounds for dismissal disposed of the claims for damages. The court ruled that most of the defendants are protected from liability by Eleventh Amendment, judicial, prosecutorial, or quasi-judicial immunity. Only one argument by Loggins against this ruling merits a response. He contends that the district court should not have raised these issues under § 1915A because immunities are affirmative defenses. \ "But even if immunities are affirmative defenses and district courts should not ordinarily dismiss a complaint based on an affirmative defense, § 1915A states that "the court shall . . . dismiss the complaint, or any portion of the complaint, if [it] . . . seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b)(2) (emphasis added). This fairly recent statutory provision overrides any contrary rule under the Federal Rules of Civil Procedure. See Autoskill v. Nat'l Educ. Support Sys., 994 F.2d 1476, 1485 (10th Cir. 1993), overruled on other grounds by TW Telecom Holdings Inc. v. Carolina Internet Ltd., 661 F.3d 495, 496-97 (10th Cir. 2011). "Thus, the district court properly raised and ruled on the issues of Eleventh Amendment, judicial, prosecutorial, and quasi-judicial immunity. See, e.g., Payton, 2020 U.S. App. LEXIS 32381, 2020 WL 6058589, at *2 (affirming § 1915A dismissal on judicial, prosecutorial, and Eleventh Amendment immunity grounds); Coleman v. Farnsworth, 90 F. App'x 313, 317-18 (10th Cir. 2004) (affirming § 1915A dismissal on quasi-judicial immunity grounds).

"Although [**7] not every defendant was held to be immune from liability by the district court, the court's third ground for dismissal does apply to them all. Under *Heck v. Humphrey*, "[if] a [§ 1983] judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . , the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated," 512 U.S. 477, 487, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

"This rule obviously applies but, as with the immunity issue, Loggins argues that the Heck issue is an affirmative defense that the district court should not have raised sua sponte. We disagree. Rather than creating an affirmative defense, "Heck adds an element to the claim. As the Supreme Court explained:

"[T]o recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized [*328] to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for [**8] damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

"Heck, 512 U.S. at 486-87 (additional emphasis added; footnote omitted). We have accordingly recognized that "a plaintiff c[an]not bring a civil-rights claim for damages under § 1983 based on actions whose unlawfulness would render an existing criminal conviction invalid." Havens v. Johnson, 783 F.3d 776, 782 (10th Cir. 2015) (emphasis added). "See, e.g., Payton v. Ballinger, No. 20-3101, 831 F. App'x 898, 2020 U.S. App. LEXIS 32381, 2020 WL 6058589, at *2 (10th Cir. Oct. 14, 2020) (analyzing § 1915A Heck dismissal under failure-to-state-a-claim rubric); cf. Higgins v. City of Tulsa, 103 F. App'x 648, 652 (10th Cir. 2004) (affirming a sua sponte dismissal under Fed. R. Civ. P. 12(b)(6) when the Heck infirmity was "patently obvious" (internal quotation marks omitted)). Since all the damages sought by Loggins are based on actions by defendants that allegedly caused his convictions or prevented the convictions from being set aside, the district court properly applied Heck to dismiss his claims.

In sum, we see no error in the district court's § 1915A disposition.

B. Recusal

"Loggins also challenges the district judge's denial of his motion to recuse. "We . . . review a district court's denial of a motion to recuse or disqualify a judge for abuse of discretion." Mathis v. Huff & Puff Trucking, Inc., 787 F.3d 1297, 1308 (10th Cir. 2015). Loggins's argument for recusal rests on his belief that the district judge showed bias by raising affirmative defenses [**9] on defendants' behalf. "But his rulings are not evidence of bias. See, e.g., Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); Green v. Branson, 108 F.3d 1296, 1305 (10th Cir. 1997) ("[A]dverse rulings cannot in themselves form the appropriate grounds for disqualification." (internal quotation marks omitted)). And in any event, as we have

just explained, the judge ruled appropriately. He did not abuse his discretion when he denied Loggins's motion to recuse.

C. Other Motions

Finally, Loggins challenges the district court's denial of his summary-judgment motion, default-judgment motion, motion for TRO and preliminary injunction, and motion to change venue. Our affirmance of the district court's § 1915A dismissal moots these issues, so we need not address them.

III. CONCLUSION

We affirm the district court's judgment.

Entered for the Court

Harris L Hartz

Circuit Judge

Footnotes

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

APPENDIX-B

Loggins v. Pilshaw, 2020 U.S. Dist. LEXIS 6564

Copy Citation

United States District Court for the District of Kansas

January 15, 2020, Decided; January 15, 2020, Filed

Case No. 18-3254-DDC

Reporter

2020 U.S. Dist. LEXIS 6564 * | 2020 WL 224542

KEVIN D. LOGGINS, SR., Plaintiff, v. **REBECCA L. PILSHAW**, et al., Defendants.

Subsequent History: Affirmed by Loggins v. Pilshaw, 2020 U.S. App. LEXIS 37486 (10th Cir. Kan., Dec. 1, 2020)

Prior History: Loggins v. Pilshaw, 2019 U.S. Dist. LEXIS 51106, 2019 WL 1384203 (D. Kan., Mar. 27, 2019)

Core Terms

Recuse, amended complaint, immunity, allegations, motions, denies, screen, bias, government entity, pro se, damages, Amend

Counsel: [*1] Kevin D. Loggins, Sr., Plaintiff, Pro se, Hutchinson, KS.

Judges: Daniel D. Crabtree, United States District Judge.

Opinion by: Daniel D. Crabtree

Opinion

MEMORANDUM AND ORDER

Pro se plaintiff " Kevin D. Loggins, Sr., brings an Amended Complaint (Doc. 27) and the following motions before the court: Motion to Recuse Judge Daniel Crabtree and to Remove Cases from Topeka Division for Lack of Impartiality & Inability to Receive a Fair Hearing (Doc. 26); Motion for Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 33); Motion for Summary Judgment (Doc. 35); Motion Seeking Adjudication of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 38); Motion Seeking Default Judgment (Doc. 39); and Motion Seeking Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 41).

First, the court denies plaintiff's Motion to Recuse (Doc. 26) for reasons explained below.

Second, the court concludes that plaintiff's Amended Complaint (Doc. 27) fails to address the deficiencies the court identified in his first Complaint (Doc. 1). The court thus dismisses the case for failure to state a claim. The court denies the remainder of plaintiff's motions as moot (Docs. 33, 35, 38, 39, & 41).

I. Procedural History [*2]

On September 25, 2018, plaintiff—a prisoner at Hutchinson Correctional Facility—filed a Complaint under 42 U.S.C. § 1983. He sued 38 defendants. " Doc. 1. Plaintiff also brought seven motions as part of his § 1983 claim, including a Motion for Leave to Amend Complaint (Doc. 18). Plaintiff sought leave to amend his Complaint so that he could "add an additional count for conduct of Judge James Fleetwood, and request punitive damages." Doc. 18 at 1.

The court screened plaintiff's complaint under 28 U.S.C. § 1915A(a). See generally Doc. 20. This statute requires the court to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. The court must dismiss any complaint (or any portion of a complaint) if it presents 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). Plaintiff's Complaint did not survive screening. Doc. 20 at 16-17. The court identified the deficiencies in plaintiff's Complaint but granted him leave to file a complete and proper amended complaint. *Id.* at 17.

On April 30, 2019, plaintiff filed an Amended Complaint [*3] (Doc. 27). He also has filed the following motions: Motion to Recuse Judge Daniel Crabtree (Doc. 26); Motion for Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 33); Motion for Summary Judgment (Doc. 35); Motion Seeking Adjudication of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 38); Motion Seeking Default Judgment (Doc. 39); and Motion Seeking Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 41).

II. Recusal Motion

Plaintiff seeks to remove the judicial officer assigned to this case. He argues that the assigned judge has shown a "lack of neutrality and impartiality." Doc. 26 at 13. He asserts that the court's "claims of defi[ci]encies in plaintiff[']s [C]omplaint are refuted by the record. In fact Judge Daniel Crabtree argues affirmative defenses for the [] defendants who[] have yet to respond to the [C]omplaint" *Id.* at 2. Essentially, plaintiff seeks recusal because the court's March 27, 2019 Order granting plaintiff's Motion for Leave to Amend Complaint identified deficiencies in plaintiff's Complaint. The Order explained those deficiencies and directed plaintiff to address them if he filed an Amended Complaint.

"Two statutes govern [*4] judicial recusal, 28 U.S.C. §§ 144 and 455. Burleson v. Sprint PCS Group, 123 F. App'x 957, 959 (10th Cir. 2005). For recusal under § 144, the moving party must submit an affidavit showing bias and prejudice. " *Id.* (citing Glass v. Pfeffer, 849 F.2d 1261, 1267 (10th Cir. 1988)). The bias and prejudice must be personal, extrajudicial, and identified by "facts of time, place, persons, occasions, and circumstances." *Id.* at 960 (quoting Hinman v. Rogers, 831 F.2d 937, 939 (10th Cir. 1987)). These facts will be accepted as true, but they must

be more than conclusions, rumors, beliefs, and opinions. *Id.* Without an affidavit showing bias or prejudice and proper identification of events manifesting a personal and extrajudicial bias, plaintiff cannot support a request for recusal under 28 U.S.C. § 144.

"Alternatively, under 28 U.S.C. § 455, a judge must disqualify himself "in any proceeding in which his impartiality might reasonably be questioned," or "[w]here he has a personal bias or prejudice concerning a party" 28 U.S.C. § 455(a) & (b)(1). The test for determining impartiality is an objective one, based on a judge's "outward manifestations and reasonable inferences drawn therefrom." Nichols v. Alley, 71 F.3d 347, 351 (10th Cir. 1995) (citation omitted).

Plaintiff here alleges no facts suggesting personal bias or prejudice. "Plaintiff appears to interpret the court's March 27, 2019 Order as adverse to him because it identified deficiencies in his Complaint. But adverse rulings do not provide a [*5] reason for recusal. See Green v. Branson, 108 F.3d 1296, 1305 (10th Cir. 1997) (stating that "adverse rulings 'cannot in themselves form the appropriate grounds for disqualification'" (quoting Green v. Dorrell, 969 F.2d 915, 919 (10th Cir. 1992))). In sum, plaintiff has failed to establish any grounds to remove the assigned judge from this case. The court thus denies plaintiff's Motion to Recuse (Doc. 26). Also, the court denies as moot plaintiff's motions seeking a status update on his recusal motion (Docs. 33, 38, & 41).

III. Plaintiff's Complaints

Generally, plaintiff brings this § 1983 action alleging that he is incarcerated wrongfully because of errors committed in his underlying criminal proceeding. First, the court recites the legal standard that applies to pro se prisoners seeking relief against a governmental entity or officer. The court then notes the deficiencies it already has identified in plaintiff's Complaint. Finally, the court analyzes plaintiff's Amended Complaint. For reasons explained below, plaintiff's Amended Complaint will not survive screening either.

A. 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 [*6] dismiss a complaint (or any portion of it) if the complaint raises 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).

""To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988) (citations omitted); Northington v. Jackson, 973 F.2d 1518, 1523 (10th Cir. 1992). A court liberally construes a pro se complaint and applies "less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). Also, the court accepts all well-pleaded allegations as true.

Anderson v. Blake, 469 F.3d 910, 913 (10th Cir. 2006). "But, "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief," dismissal is appropriate. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 558, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

"A pro se litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Although this standard "does not require 'detailed factual allegations,'" it demands more than "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action'" [*7] which, as the Supreme Court has explained, simply "will not do." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Twombly, 550 U.S. at 555). In short, the court need not "accept as true a legal conclusion couched as a factual allegation." Twombly, 550 U.S. at 557 (quoting Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)) (internal quotation omitted).

"The Tenth Circuit has explained "that, to state a claim in federal court, a complaint must explain what each defendant did to [the pro se plaintiff]; when the defendant did it; how the defendant's action harmed [the plaintiff]; and, what specific legal right the plaintiff believes the defendant violated." Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1163 (10th Cir. 2007). The court "will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." Whitney v. New Mexico, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (citation omitted).

"Our Circuit also has held that the Supreme Court's decisions in Twombly and Erickson gave rise to a new standard of review for § 1915(e)(2)(B)(ii) dismissals. See Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007) (citations omitted); see also Smith v. United States, 561 F.3d 1090, 1098 (10th Cir. 2009). As a result, courts must "look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief." Kay, 500 F.3d at 1218 (citation omitted). ¶ "Under this new standard, "a plaintiff must nudge his claims across the line from conceivable to plausible." Smith, 561 F.3d at 1098 (internal quotation marks and citation omitted). "Plausible" [*8] in this context does not mean "likely to be true." Instead, it refers "to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent," then the plaintiff has not "nudged [his] claims across the line from conceivable to plausible." Robbins v. Oklahoma, 519 F.3d 1242, 1247 (10th Cir. 2008) (citing Twombly, 550 U.S. at 570).

B. Plaintiff's First Complaint (Doc. 1)

On January 24, 2019, plaintiff filed a Motion Seeking Leave to Amend the Complaint (Doc. 18). Plaintiff asked to add "an additional count for conduct of Judge James Fleetwood, and request punitive damages." Doc. 18 at 1. The court granted plaintiff's motion, but identified the following deficiencies in his original Complaint and ordered plaintiff to address those deficiencies in an Amended Complaint.

1. Habeas Nature of the Claims

The court found that plaintiff had brought his claims under 42 U.S.C. § 1983 improperly. Doc. 20 at 7. The court explained that, to the extent plaintiff sought relief that would result in an immediate or speedier release from prison, he must bring those claims in a petition for a writ of habeas corpus, not under § 1983. Id. at 6. The court informed plaintiff that if he "elects to file an Amended Complaint, he must identify whether he asks [*9] for relief besides an order releasing him from confinement. If plaintiff seeks such relief, he must identify it precisely and explicitly." Id. at 8.

2. Heck Bar

"The court found that the Heck rule barred plaintiff's claims for damages based on his challenge to his state court convictions and sentences. Doc. 20 at 8-9 (citing Heck v. Humphrey, 512 U.S. 477, 487, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994)). The Heck rule prevents litigants from using a § 1983 action to challenge their conviction or sentence without complying with the more stringent exhaustion requirements for habeas actions. "Johnson v. Pottawotomie Tribal Police Dep't, 411 F. App'x 195, 198 (10th Cir. 2011). Plaintiff failed to show that his conviction and sentence ever were invalidated. Doc. 20 at 9. The court directed plaintiff to address this issue in his Amended Complaint. Id.

3. Immunities

The court found that four immunity doctrines—Eleventh Amendment immunity, judicial immunity, prosecutorial immunity, and quasi-judicial immunity—barred the claims in plaintiff's original Complaint. Id. at 9-13. The court advised plaintiff that any claim for money damages against state officials in their official capacity was subject to dismissal on sovereign immunity. Id. at 11. The court noted that it was "ambiguous whether plaintiff seeks damages against a state official in her official or individual capacity" and thus directed plaintiff to [*10] "resolve this uncertainty if he chooses to file an Amended Complaint." Id.

Plaintiff's claims against federal and state judges were subject to dismissal based on judicial immunity. Id. Since plaintiff's Complaint did not "suggest that any of the judges he ha[d] sued acted outside their judicial capacity," the court directed plaintiff to "address this issue in his Amended Complaint." Id. at 12. Prosecutorial immunity barred plaintiff's claims against the assistant district attorney in his criminal case. Id. at 12. And, finally, quasi-judicial immunity barred claims against Sheriff Jeff Easter and KDOC Secretary Roger Werholtz. Id. The court permitted plaintiff to amend his complaint to address these immunity issues. Id.

4. State Law and Criminal Claims

Plaintiff's Complaint alleged that Judge Pilshaw and Judge Owens violated section 10 of the Kansas Constitution Bill of Rights. Doc. 1 at 12, 14; Doc. 20 at 13. The court explained that "Section 1983 is not a vehicle to vindicate a state law violation." Doc. 20 at 13. Plaintiff's Complaint also asked the court to fine or imprison several defendants for obstructing justice under 18 U.S.C. §§ 1512 and 1519 and the Sarbanes-Oxley Act. Doc. 1 at 18, 20; Doc. 20 at 13. The court explained that §§ 1512 and 1519 are criminal statutes and do not provide a [*11]

private right of action. Doc. 20 at 13. And, plaintiff failed to explain which provision of the Sarbanes-Oxley Act defendants had violated and he never provided any authority suggesting the Act permits a private right of action. Id. The court directed plaintiff to address these deficiencies in his Amended Complaint. Id.

C. Plaintiff's Amended Complaint (Doc. 27)

Plaintiff has filed an Amended Complaint (Doc. 27). His Amended Complaint is nearly identical to his first Complaint. The court has identified just these amendments. They are:

- Plaintiff has replaced defendant Jeff Colyer with current Kansas Governor Laura Kelly. Compare Doc. 1 at 7 with Doc. 27 at 7.
- Plaintiff has replaced defendant Joseph Norwood with current Secretary for the Kansas Department of Corrections, Roger Werholtz. Compare Doc. 1 at 8 with Doc. 27 at 8.
- Plaintiff has provided additional information about defendant Judge James Fleetwood (Doc. 27 at 10) and has added a claim (Count 10) against Judge Fleetwood. Doc. 27 at 17. Plaintiff alleges that Judge Fleetwood "acted without jurisdiction" and "afforded the case not even the basic fundamental right to procedural due process." Doc. 27 at 17. Judge Fleetwood "did [*12] so to continue the illegal and false imprisonment of plaintiff with malicious intent and depraved indifference." Id.

None of these amendments correct the deficiencies the court identified in its March 27, 2019 Order. Plaintiff has failed to identify precisely and explicitly the relief he seeks for his § 1983 claim, as the court directed. Doc. 20 at 8. Plaintiff's Amended Complaint never addresses the Heck rule or immunity issues the court identified. Id. at 8-13. And, plaintiff hasn't amended his state law or criminal claims. Id. at 13. Plaintiff's Amended Complaint thus fails to state a claim upon which the court can grant relief. So, the court dismisses the case under 28 U.S.C. § 1915A(b).

IV. Conclusion

The court denies plaintiff's Motion to Recuse (Doc. 26) because plaintiff fails to establish any ground to remove the assigned judge from the case. The court dismisses plaintiff's Amended Complaint (Doc. 27) because plaintiff has failed to correct the deficiencies the court identified and explained in its previous Order (Doc. 20). The Amended Complaint thus fails to state a plausible claim for relief and the case is subject to dismissal under § 1915A(b). The court denies as moot plaintiff's other motions: Motion for Status of Plaintiff's [*13] Motion to Recuse Judge Daniel Crabtree (Doc. 33); Motion for Summary Judgment (Doc. 35); Motion Seeking Adjudication of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 38); Motion Seeking Default Judgment (Doc. 39); and Motion Seeking Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 41).

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's Motion to Recuse (Doc. 26) is denied.

IT IS FURTHER ORDERED THAT plaintiff's case is dismissed for failure to state a claim.

IT IS FURTHER ORDERED THAT plaintiff's Motion for Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 33); Motion for Summary Judgment (Doc. 35); Motion Seeking Adjudication of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 38); Motion Seeking Default Judgment (Doc. 39); and Motion Seeking Status of Plaintiff's Motion to Recuse Judge Daniel Crabtree (Doc. 41) are denied as moot.

IT IS SO ORDERED.

Dated this 15th day of January, 2020, at Kansas City, Kansas.

/s/ Daniel D. Crabtree

Daniel D. Crabtree

United States District Judge

Footnotes

"Because plaintiff proceeds pro se, the court construes his pleadings liberally. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) (holding that courts must construe pro se litigant's pleadings liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers). But, under this standard, the court does not assume the role as plaintiff's advocate. "Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005). The court does not construct arguments for plaintiff or search the record. Id.

Defendants included multiple state court and federal judges; court reporters; an assistant district attorney; the Clerk of the Sedgwick County District Court; the Governor of the State of Kansas; Sedgwick County Commissioners; the Sedgwick County Counselor; the Sedgwick County Sheriff; the Secretary of Corrections for the Kansas Department of Corrections; and the Clerk of the Kansas Court of Appeals. Doc. 1 at 1-10; Doc. 20 at 2.

APPENDIX-C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

May 14, 2021

Christopher M. Wolpert
Clerk of Court

KEVIN D. LOGGINS, SR.,

Plaintiff - Appellant,

v.

REBECCA L. PILSHAW, District Court
Judge, Sedgwick County District Court, et
al.,

Defendants - Appellees.

No. 20-3007
(D.C. No. 5:18-CV-03254-DDC)
(D. Kan.)

ORDER

Before **HARTZ**, **McHUGH**, and **CARSON**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

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