

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 29 2021

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

DONNELL BLEDSOE,

No. 20-16650

Plaintiff-Appellant,

D.C. No. 2:19-cv-02553-TLN-CKD

v.
GUILIANI, Judge; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Donnell Bledsoe appeals pro se from the district court's judgment dismissing his action alleging federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e). *Barren Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

No. 2:19-cv-02553-TLN-CKD

Plaintiff,

ORDER

v.

JUDGE GUILIANI, et al.,

Defendants.

Plaintiff Donnell Bledsoe (“Plaintiff”), proceeding *pro se*, brings this civil action titled “PETITION TO THE SUPREME COURT JUDICIAL MISCONDUCT OBSTRUCTION OF JUSTICE HIGH CRIES AND MISDEMEANORS VIOLATION OF THE ORGANIZED CRIME ACT OF (1970) RICO ACT FRAUD, BRIBERY AND ABSENCE OF JURISDICTION.” The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 23, 2020, the magistrate judge filed findings and recommendations which were served on the Plaintiff and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 3.) No objections were filed.

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1 Accordingly, the Court presumes that any findings of fact are correct. *See Orand v.*
2 *United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are
3 reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir.
4 1983); *see also* 28 U.S.C. § 636(b)(1).

5 Having reviewed the file under the applicable legal standards, the Court finds the Findings
6 and Recommendations to be supported by the record and by the magistrate judge's analysis.

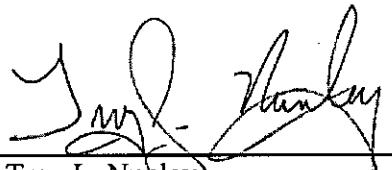
7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The Proposed Findings and Recommendations filed January 23, 2020 (ECF No. 3), are
9 **ADOPTED**.

10 2. Plaintiff's complaint is DISMISSED without leave to amend.

11 IT IS SO ORDERED.

12 DATED: April 7, 2020

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14 _____
15 Troy L. Nuhley
16 United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

DONNELL BLEDSOE,

CASE NO: 2:19-CV-02553-TLN-CKD

v.

GUILIANI, ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 4/8/2020**

Keith Holland
Clerk of Court

ENTERED: April 8, 2020

by: /s/ R. Becknal
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

No. 2:19-cv-02553-TLN-CKD PS

Plaintiff,

v.

JUDGE GUILIANI, et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

(ECF No. 2)

I. Plaintiff's Application to Proceed in Forma Pauperis is Granted

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

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1 II. Recommendation That Plaintiff's Claims Against All Four Defendants be Dismissed
2 Without Leave to Amend

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–28 (9th
5 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
7 490 U.S. at 327.

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than
9 “naked assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause
10 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–57 (2007). In other words,
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
16 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
17 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
18 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
19 U.S. 232, 236 (1974).

20 Plaintiff names four defendants in his complaint: San Joaquin County Superior Court
21 Judges Giuliani and Ronald Northup, District Attorney Stacey Derman, and San Joaquin County
22 Public Defender Christina Martinez. Plaintiff's complaint alleges that Judge Giuliani was biased
23 against him (ECF No. 1 at 3), Judge Northup is liable as a supervisor (ECF No. 1 at 2), that
24 District Attorney Stacey Derman “bribed [plaintiff] into taking a strike in exchange for the
25 alternative work program” (ECF No. 1 at 2), and that Public Defender Christina Martinez violated
26 his constitutional rights (ECF No. 1 at 1.) Plaintiff further asserts he is entitled to diplomatic
27 immunity and that he is immune from prosecution. (ECF No 1 at 2.) Plaintiff attaches several
28 exhibits to his complaint related to grievances filed in jail. (See ECF No. 1 at 11-16.)

1 Plaintiff's claims against all four defendants are vague and conclusory, but even viewing
2 the allegations in the light most favorable to plaintiff these four defendants are immune from suit
3 and should therefore be dismissed without leave to amend.

4 Regarding plaintiff's allegations against Judge Giuliani and Judge Northup, “[j]udges are
5 immune from damage actions for judicial acts taken within the jurisdiction of their courts. . . .
6 Judicial immunity applies ‘however erroneous the act may have been, and however injurious in
7 its consequences it may have proved to the plaintiff.’” Ashelman v. Pope, 793 F.2d 1072, 1075
8 (9th Cir. 1986) (quoting Cleavinger v. Saxner, 474 U.S. 193, 199–200 (1985)). A judge can lose
9 his or her immunity when acting in clear absence of jurisdiction, but one must distinguish acts
10 taken in error or acts that are performed in excess of a judge’s authority (which remain absolutely
11 immune) from those acts taken in clear absence of jurisdiction. Mireles v. Waco, 502 U.S. 9, 12–
12 13 (1991) (“If judicial immunity means anything, it means that a judge ‘will not be deprived of
13 immunity because the action he took was in error . . . or was in excess of his authority’” (quoting
14 Stump v. Sparkman, 435 U.S. 349, 356 (1978))). Thus, for example, in a case where a judge
15 actually ordered the seizure of an individual by means of excessive force, an act clearly outside of
16 his legal authority, he remained immune because the order was given in his capacity as a judge
17 and not with the clear absence of jurisdiction. Id.; see also Ashelman, 793 F.2d at 1075 (“A judge
18 lacks immunity where he acts in the clear absence of jurisdiction . . . or performs an act that is not
19 judicial in nature.”).

20 Based on plaintiff's complaint and the documents attached to it, it appears plaintiff seeks
21 monetary relief from both state court judges for actions taken within their jurisdiction—handling
22 a family court matter and criminal matter both involving defendant. Such actions are
23 quintessential examples of judicial acts. Therefore, the defendant judges are immune from this
24 suit, “however erroneous the act[s] may have been.” Ashelman, 793 F.2d at 1075. Plaintiff's
25 proper course of action to redress any alleged erroneous rulings by the defendant judges was to
26 address those rulings in state court. In sum, plaintiff's claims against Judge Giuliani and Judge
27 Northup should be dismissed without leave to amend.

28 Next, plaintiff named defendant District Attorney Stacey Derman. The United States

1 Supreme Court has held that “in initiating a prosecution and in presenting the State’s case, the
2 prosecutor is immune from a civil suit for damages under § 1983.” Imbler v. Pachtman, 424 U.S.
3 409, 431 (1976). Such absolute immunity applies “even if it leaves ‘the genuinely wronged
4 defendant without civil redress against a prosecutor whose malicious and dishonest action
5 deprives him of liberty.’” Ashelman, 793 F.2d at 1075 (quoting Imbler, 424 U.S. at 427). Thus,
6 Derman is immune from suit and plaintiff’s claims against her should be dismissed without leave
7 to amend.

8 Finally, regarding San Joaquin County Public Defender Christina Martinez, “[t]o state a
9 claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and
10 laws of the United States, and must show that the alleged deprivation was committed by a person
11 acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988) (citations omitted). “[A]
12 public defender does not act under color of state law when performing a lawyer’s traditional
13 functions as counsel to a defendant in a criminal proceeding.” Polk Cnty. v. Dodson, 454 U.S.
14 312, 325 (1981). Because plaintiff’s allegations appear to pertain to Christina Martinez acting in
15 her capacity as an attorney during the course of her criminal proceedings, assuming she was
16 plaintiff’s assigned public defender, she was not acting under color of state law. This means that
17 plaintiff cannot bring a claim against her under § 1983. In fact, there is no claim specifically
18 addressing Christina Martinez in plaintiff’s complaint beyond his assertion that she “violated [his]
19 constitutional rights.” (See ECF No. 1 at 1.) Furthermore, any potential claims for legal
20 malpractice do not come within the jurisdiction of the federal courts. Franklin v. Oregon, 662
21 F.2d 1337, 1344 (9th Cir. 1981). Plaintiff therefore cannot maintain an action against Christina
22 Martinez and his claims against her should be dismissed without leave to amend.

23 III. Leave to Amend Futile

24 If the court finds that a complaint should be dismissed for failure to state a claim, the court
25 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126–
26 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the
27 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130–31; see
28 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given

1 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely
2 clear that the deficiencies of the complaint could not be cured by amendment.” (citing Noll v.
3 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987))). However, if, after careful consideration, it is
4 clear that a complaint cannot be cured by amendment, the court may dismiss without leave to
5 amend. Cato, 70 F.3d at 1105–06 (affirming dismissal and finding the plaintiff’s “theories of
6 liability either fall outside the limited waiver of sovereign immunity by the United States, or
7 otherwise are not within the jurisdiction of the federal courts”).

8 The undersigned finds that, as set forth above, defendants Judge Giuliani, Judge Ronald
9 Northup, District Attorney Stacy Derman, and San Joaquin County Public Defender Christina
10 Martinez are immune from liability and the complaint does not identify a waiver of immunity. As
11 it appears amendment would be futile, the undersigned recommends that this action be dismissed
12 as to these four defendants without leave to amend.

13 IV. Conclusion

14 It is HEREBY ORDERED that:

15 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED.

16 Additionally, it is HEREBY RECOMMENDED that:

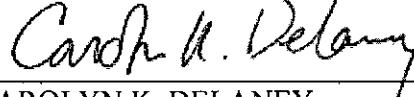
17 1. Plaintiff’s complaint be DISMISSED without leave to amend.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, the parties may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that
23 failure to file objections within the specified time may waive the right to appeal the District
24 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated:

26 Dated: January 23, 2020

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28 16 bledsoe2553.ifp.nolto


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

Certificate of Completion

This is to certify that

Donnell Bleedsoe

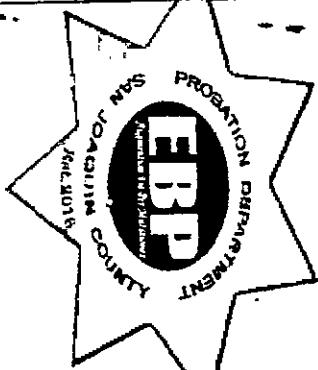
has successfully completed the *Evidence Based Programming* at San Joaquin County Probation
on this 30th day of May 2019.

Presented by the

San Joaquin County Probation Department

J. TORRES, PROBATION OFFICER

V. BONPUA, UNIT SUPERVISOR



JOHN A. CHEILSEN, Ph. D.

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Filed JAN 06 2017
ROSA JUANQUERO, CLERK

By JENNY SANCHEZ
DEPUTY

EXHIBIT
#1

EVALUATION OF COMPETENCE TO STAND TRIAL

DEFENDANT: DONNELL BLEDSOE

COURT CASENUMBER: STK-CR-FE-2016-16074

DATE OF EVALUATION: January 3, 2017

IDENTIFICATION

Mr. Bledsoe is a 50-year-old widowed male of African American descent who was seen for an evaluation of his present competence to stand trial pursuant to Section 1368 of the Penal Code on appointment by San Joaquin County Superior Court. The defendant was seen for the evaluation on a general population unit at the San Joaquin County Jail where he is incarcerated awaiting trial on charges of violating Section 422 of the Penal Code.

NOTIFICATION OF RIGHTS

Mr. Bledsoe was informed of the need to conduct an evaluation of his present trial competency in connection with the above-captioned case. He stated that he understood that the findings of this evaluation would be communicated in writing to the court and that his comments were not to be considered confidential.

BACKGROUND INFORMATION

The defendant reported that he is one of five children born to the union of his parents. He was born and raised in Stockton. He described his developmental years in reasonably positive terms and related that he was raised by his mother in a single parent household but eventually developed a relationship with his father. He graduated from Franklin High School in regular classes and reports having completed an associate's degree in social science at San Joaquin Delta College. He has no history of military service. He reported that he was employed as a youth counselor in Team Triumph group home until being medically retired in 2001 due to a back injury.

Mr. Bledsoe has been widowed from his wife of 11 years for six years. He reports having fathered four children, two of whom are still minors. At the time of his arrest, he was living in the home he inherited from his mother along with his 23-year-old son. He reported that his usual daily activities consisted of doing housework and running errands. He identified his interests and hobbies as consisting of operating a music and

entertainment page on Facebook. Mr. Bledsoe reports having an active and satisfying social life while at liberty.

Aside from chronic back pain and hypertension, Mr. Bledsoe reported that he enjoys reasonably good physical health. He is taking over-the-counter analgesics and an antihypertensive agent at the jail. He indicated that he had been prescribed prescription strength pain medication by Dr. Holmes his primary care physician while at liberty. Mr. Bledsoe reported that he occasionally consumes alcohol in moderation and denied any history of illicit substance use. He summarized his prior involvement with the criminal justice system by stating, "I was convicted of domestic violence and I graduated from a domestic violence course." He acknowledged being on probation at the present time.

CLINICAL INTERVIEW

Mr. Bledsoe is a short, medium statured male of African American descent with a receding hairline and a neatly trimmed beard. He was alert and articulate and accurately oriented to the date. He was conversant with current affairs and correctly recalled three of three items of information following a 30 minute delay. The defendant appears to be of average intelligence and did not evidence any deficiencies in his span of concentration or short term memory. His thought content was mildly idiosyncratic but did not reveal the presence of any well entrenched delusional ideation.

Mr. Bledsoe described his present mood in moderately positive terms and did not evidence any signs of psychological distress. He did not believe that he had ever experienced a clinically significant degree of depression or anxiety. He responded to an inquiry about his history of problematic anger by stating, "No problems with it. I just don't like people to lie to me and not expect me to have a logical response. People try to side track me like my tenant who refuses to pay rent." The defendant denied ever having experienced any hallucinatory phenomena and did not appear to be responding to any internal stimuli during the evaluation. He believed that he had been referred for a competency evaluation, "because she didn't want to be bothered with my case". He described his mental status during his initial court appearances as, "Pretty good. I just want my due process."

DIAGNOSTIC IMPRESSION

1. No major mental disorder noted
2. No developmental disorder noted
3. Paranoid personality features.

DEFENDANT'S VERSION OF THE PRESENT OFFENSES

Mr. Bledsoe declined to offer account of the events leading up to his arrest in the present case stating:

Re: Donnell Bledsoe

Date: January 3, 2017

* UNCONSTITUTIONAL IMPROPER INVALID ARREST
"What happened was I was at the bank and the officers pulled up by me and didn't read me my rights. They wouldn't tell me what they were arresting me for. We drove to my house and they took 30 minutes to get in the house and scared my son. When they took me down to the station they said they found three guns. One is a Dillinger (sic) that his mother gave him. The 380 was my wife's and she gave it to my son, and the 22 they found in my attic belonged to my aunt."

COMPETENCY ISSUES

Mr. Bledsoe reported that he was arrested at the March Lane branch of Farmers and Merchants Bank on December 3rd. He recalled having made three court appearances thus far on, "December 6th, 14th, and 15th". The defendant believed that his current charges include, "violation of probation, vandalism, and a felon in possession of a firearm". He categorized his charges as being, "one misdemeanor and two felonies". The defendant denied having been informed of a plea bargain offer as yet and was unaware of the potential sentence he could receive were he to be convicted.

Mr. Bledsoe responded to a query about his perception of the likelihood of being treated fairly in the upcoming proceedings by stating, "I want to give Ellen a chance and if her counsel is ineffective, I'll go pro se." He was unresponsive to a question about his perception of the risk of conviction. He appeared to be reasonably well informed about the usual role of evidence and witnesses in criminal proceedings. He described the role of the judge as, "to judge things and weigh evidence". He indicated that the role of the district attorney is, "to prosecute" and that of the public defender as, "to defend me". He was able to describe the makeup and function of a jury.

Mr. Bledsoe recalled the identity of both of his attorneys by name. He complained that he had been poorly represented by his initial attorney Ms. Martinez whom he indicated, "illegally asked for this competency evaluation. I gave her all the evidence she needed to win my case." He reported that he has been favorably impressed with Ms. Schwarzenberg thus far. He does not believe that he would have any difficulty developing a trusting and collaborative relationship with her or an attorney other than Ms. Martinez who might be assigned to represent him. He indicated that he would invoke his right to represent himself only as a last resort. The defendant appears to be capable of recalling and disclosing relevant information to counsel and comprehending and retaining their instructions. He has the ability to weigh and compare legal options or alternatives which may be available to him in a contentious and self serving manner.

SUMMARY AND CONCLUSIONS

Mr. Bledsoe is a 50 -year-old male awaiting trial on several charges including a violation of probation and making verbal threats toward his tenant. The defendant is not showing evidence of developmental disability or a major psychiatric disorder at the present time. His perceptions and reasoning do appear to reflect longstanding paranoid features in his

Evaluation of Competence to Stand Trial
Re: Donnell Bledsoe
Date: January 3, 2017

Page 4 of 4

personality makeup. He possesses a factual understanding of the nature and purpose of the proceedings pending against him. He is cognizant of his status as a defendant in relation to the present charges but is not fully apprised of potential legal risks he is facing. He is capable of assisting counsel in a rational manner in preparing and presenting a defense if he chooses to do so. Based upon all the information presently available, Mr. Bledsoe is regarded as being competent to stand trial.

Respectfully Submitted,



John A. Chellsen, Ph.D.
Clinical Psychologist