**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 20-7214**

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HARRY SHAROD JAMES,

Plaintiff - Appellant,

v.

ROY COOPER; JOSH STEIN; KENNETH E. LASSITER; CHRIS WOODS; STATE OF NORTH CAROLINA,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:19-ct-03029-BO)

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Submitted: August 20, 2021 Decided: September 27, 2021

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Before FLOYD and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Harry Sharod James, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Harry Sharod James appeals the district court's order dismissing his 42 U.S.C. § 1983 complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *James v. Cooper*, No. 5:19-ct-03029-BO (E.D.N.C. Aug. 7, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-CT-3029-BO

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| HARRY SHAROD JAMES,<br><br>Plaintiff,<br><br>v.<br><br>ROY COOPER, JOSH STEIN, KENNETH E. LASSITER, CHRIS WOODS, and THE STATE OF NORTH CAROLINA,<br><br>Defendants. | ) | ORDER |

The matter now comes before the court on plaintiff's motion for summary judgment (DE 33). Also before the court is defendants' motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1)(2), and (6) (DE 35). The issues raised are ripe for adjudication. For the following reasons, the court grants defendants' motion to dismiss, denies plaintiff's motion for summary judgment, and dismisses plaintiff's remaining claims pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

**STATEMENT OF THE CASE**

On January 24, 2019, plaintiff Harry Sharod James ("plaintiff"), a state inmate incarcerated at Hyde Correctional Institution ("Hyde"), filed this civil rights action *pro se* pursuant to 42 U.S.C. § 1983, on a hand-written document. The court subsequently entered a notice of deficiency instructing plaintiff that he must file his complaint on the proper form. On February 2, 2019, plaintiff complied. Plaintiff alleges defendants Roy Cooper ("Cooper"), Josh Stein ("Stein"), Kenneth E. Lassiter ("Lassiter"), Chris Woods ("Woods"), and the State of North Carolina denied



Appendix B

him access to courts in violation of the First Amendment to the United States Constitution. In particular, plaintiff asserts that he is being "deprived of the Fundamental Constitutional right of access to the courts held to require prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with meaningful, effective, and adequate law libraries or meaningful, effective and adequate assistance from persons trained in the law." (Am. Compl. (DE 6), p. 6). On September 13, 2019, several inmates incarcerated at Hyde filed a notice of intent to proceed with plaintiff as a class action.[1] See (DE 22).

On January 24, 2020, plaintiff filed a motion for summary judgment. Then, on February 24, 2020, defendants moved to dismiss plaintiff's action, arguing that the court lacks subject matter and personal jurisdiction. Defendants also argue that the court should dismiss this action because plaintiff failed to state a claim upon which relief may be granted. Plaintiff responded.

## STATEMENT OF FACTS

The North Carolina Department of Public Safety ("NCDPS") "no longer has law libraries; instead, to provide prisoners with meaningful access to courts, NCDPS contracts with [North Carolina Prisoner Legal Services ("NCPLS")], a non-profit, legal services program, to provide limited civil representation to inmates incarcerated in North Carolina prisons." Coffee v. North Carolina Prisoner Legal Services, No. 3:18-cv-00351, 2020 WL 4194848, at *1, n.2 (W.D.N.C. July 21, 2020) (citing Smith v. Bounds, 657 F. Supp. 1327, 1328 n.1 (E.D.N.C. 1986), aff'd, 813 F.2d 1299 (4th Cir. 1987); Wrenn v. Freeman, 894 F. Supp. 244, 247-48 (E.D.N.C. 1995)). On

[1] Pursuant to this court's Standing Order 17-SO-3, plaintiff accepted the appointment of NCPLS to assist with conducting discovery. See (DE 19). Defendants, however, moved to dismiss plaintiff's action, pursuant to Rules 12(b)(1), (2), and (6), prior to the court's issuance of a scheduling order setting a period of discovery.

November 19, 2018, plaintiff filed a grievance at Hyde complaining that he does not have adequate access to a law library. The grievance provided in pertinent part:

> North Carolina State Constitution . . . recognize my inalienable rights to apply to the General Assembly for the redress of grievances, Equal Protection of the law, the right of Inquiry into restraints on Liberty. The Constitution for the United States of America Secures my fundamental right to petition the government for the redress of any grievance. The reason I am writing this grievance do[sic] to fact and law, I do not have adequate access to a law library. North Carolina Prisoner Legal Services is limited to what they can do for offenders who are incarcerated.

((DE 1-1), p. 2). As a remedy, plaintiff requested that the NCDPS provide "offenders with a law library with precedent material, and allow [him] adequate access to it" so that he may "properly petition the Government for the redress of any Grievance." (Id.) Prison officials provided plaintiff the following Step 3[2] response:

> There is no evidence that the prison has denied this offender the ability to access the court system. Further, the North Carolina General Assembly has directed the Office of Indigent Defense Services to fulfill the constitutional duty to provide inmates with access to the courts to challenge their convictions or prison conditions. This is set by state statute and is not at the direction of NCDPS. NCDPS Policy and Procedures Chapter G .0200, Court Related Procedures dated 01/16/2018 states that every offender who is incarcerated shall be afforded reasonable access to the courts. The Department has agreed to contract various attorneys to provide assistance for offenders. The program is called the Attorney Assistance Program and is afforded to every offender requesting assistance.

(Id.)

[2]The North Carolina Department of Public Safety has a three step Administrative Remedy Procedure ("ARP") which governs the filing of grievances. See, e.g., Moore v. Bennette, 517 F.3d 717, 721 (4th Cir. 2008).

Shortly after plaintiff submitted his grievance, he wrote NCPLS a letter which provided: "I am writing this letter to ask what are you allowed to do for prisoners incarcerated in the State of North Carolina. Also, are you allowed to look up and sent US precedent case law, to help us research our own case?". (Id. p. 6). In response, NCPLS informed plaintiff that it could not make copies, perform legal research, or provide similar clerical or litigation support services to inmates. (Id. p. 7). NCPLS, however, also informed plaintiff that it was happy to evaluate his case and provide him with a legal opinion about the merits of a possible legal action. (Id.) NCPLS further informed plaintiff that it could provide legal representation in meritorious cases, and that it may offer advice in cases in which it could not offer representation. (Id.)

Petitioner asserts that the unavailability of a law library resulted in the dismissal of several North Carolina state and federal "petitions" because he could not conduct the appropriate research to present non-frivolous claims. Plaintiff specifically cites to the following three cases: James v. Daniels, No. 5:14-HC-2105-F (E.D.N.C. Sept. 9, 2014), a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254; State of North Carolina v. James, No. 06-CRS-222466 (Mecklenburg Cty. Sup. Ct. Sept. 25, 2018), a motion for appropriate relief ("MAR") filed in the Mecklenburg County Superior Court; and James v. Pendergrass, No. 18-CV-00328 (W.D.N.C July 31, 2018), a civil rights action filed pursuant to 42 U.S.C. § 1983. See (Am. Compl. (DE 6), p. 7). Plaintiff did not mention these cases in his November 19, 2018 grievance or his subsequent letter to NCPLS.

Beginning with plaintiff's above-referenced post-conviction proceedings, he originally filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this court, and the petition was transferred to the United States District Court for the Western District of North Carolina on September 9, 2014. See James, No. 5:14-HC-2105 (Sept. 9, 2014). On October 31, 2014, the

Western District granted plaintiff permission to voluntarily dismiss his § 2254 petition without prejudice. See James v. Daniels, No. 3:14-cv-496-FDW (W.D.N.C. Oct. 31, 2014). Plaintiff later re-filed his § 2254 petition in the Western District, and the petition was dismissed on the merits. See James v. Brickhouse, No. 3:19-cv-00070-FDW (W.D.N.C. May 28, 2020). The action now is pending on appeal. Id. (June 8, 2020).

On a related note, plaintiff filed his MAR in the Mecklenburg County Superior Court as part of his North Carolina State Court post-conviction proceedings. Id. ((DE 8-15), p. 12). Plaintiff alleged the following claims in his MAR: "defective indictments, inadmissible evidence entered at trial, and multiplicitious [sic] and duplicitous indictments." Id. ((DE 8-15), p. 12). The Superior Court denied plaintiff's MAR stating that plaintiff had raised his defective indictment claim on appeal, and that his remaining claims were procedurally barred because he failed to raise his claims on direct appeal. Id. Notably, plaintiff was represented by counsel during direct appeal of his North Carolina State criminal convictions. See State v. James, No. COA11-244, 2011 WL 4917045 (N.C. App. Oct. 18, 2011); State v. James, 247 N.C. App. 350, 786 S.E.2d 73 (2016).

In addition to his post-conviction actions, plaintiff asserts that his lack of access to a law library prevented him from pursuing non-frivolous claims in a civil rights action James v. Pendergrass, No. 18-CV-00328 (W.D.N.C. July 31, 2018). In his civil rights action, plaintiff sued Samantha Pendergrass, an Assistant District Attorney for the State of North Carolina, and Sandra Wallace-Smith, a Special Deputy Attorney General for the State of North Carolina. Id. p. 1. Plaintiff alleged that these defendants failed to move to dismiss his North Carolina State criminal indictments, resulting in a murder conviction for which he currently is incarcerated. Plaintiff also asserted that these defendants failed to file a motion to suppress certain evidence in his underlying

criminal proceedings. Id. pp. 1-2. The presiding judge in the Western District dismissed the action without prejudice as barred by the United States Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). Id.

**DISCUSSION**

A. Standards of Review

Defendants move to dismiss plaintiff's complaint pursuant to Rules 12(b)(1), (2), and (6). A Rule 12(b)(1) motion challenges the court's subject matter jurisdiction, and the plaintiff bears the burden of showing that federal jurisdiction is appropriate when challenged by the defendant. McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982). Such a motion may either 1) assert the complaint fails to state facts upon which subject matter jurisdiction may be based, or 2) attack the existence of subject matter jurisdiction in fact, apart from the complaint. Adams, 697 F.2d at 1219. Under the former assertion, the moving party contends that the complaint "simply fails to allege facts upon which subject matter jurisdiction can be based." Id. In that case, "the [plaintiff], in effect, is afforded the same procedural motion as he would receive under a Rule 12(b)(6) consideration." Id. "[A]ll facts alleged in the complaint are assumed true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009).

As for Rule 12(b)(6), a motion to dismiss under Rule 12(b)(6) determines only whether a claim is stated; "it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). A claim is stated if the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell

Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In evaluating whether a claim is stated, "[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the [plaintiff]," but does not consider "legal conclusions, elements of a cause of action; . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments." Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted). In other words, this plausibility standard requires a plaintiff to articulate facts, that, when accepted as true, demonstrate that the plaintiff has stated a claim that makes it plausible he is entitled to relief. Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (quotations omitted).

B. Analysis

1. Subject Matter and Personal Jurisdiction

Defendants assert that plaintiff's official capacity claims for monetary damages are barred by the Eleventh Amendment. Defendants are correct. An action by a private party to recover money damages from state officials in their official capacities is barred by the Eleventh Amendment. Huang v. Board of Governors of University of North Carolina, 902 F.2d 1134, 1138 (4th Cir. 1990). Thus, the court GRANTS defendants' motion to dismiss plaintiff's official capacity claims for monetary damages.

The court next addresses plaintiff's official capacity claims against defendants seeking declaratory and injunctive relief. State officials acting in their official capacities can be sued for prospective injunctive or declaratory relief to comply with the federal Constitution. See Ex parte Young, 209 U.S. 123 (1908); McBurney v. Cuccinelli, 616 F.3d 393, 399 (4th Cir. 2010) ("[Ex parte Young,] [] permits a federal court to issue prospective, injunctive relief against a state officer to

prevent ongoing violations of federal law, on the rationale that such suit is not a suit against the state for purposes of the Eleventh Amendment.") (citation omitted); see also, Smith v. Demory, No. 9:19-1771, 2020 WL 2814330, at *2 (D.S.C. Feb. 21, 2020), adopting R&R, 2020 WL 1181310 (D.S.C. Mar. 12, 2020). Here, plaintiff seeks a declaratory judgment and injunctive relief related to the implementation of law libraries in the State of North Carolina, which is prospective in nature. See (Am. Compl. (DE 6), p. 8). Thus, the court DENIES defendants' motion to dismiss plaintiff's official capacity claims for injunctive and declaratory relief on this record.[3]

2. Failure to State a Claim

Defendants assert that plaintiff fails to state a First Amendment access to courts claim. In order to state a claim for denial of access to the courts, an inmate must show actual injury or that a defendant's conduct hindered his efforts to pursue a legal claim. See, e.g., Lewis v. Casey, 518 U.S. 343, 351–52 (1996); Michau v. Charleston County, 434 F.3d 725, 728 (4th Cir. 2006); see also, Fox v. North Carolina Prisoner Legal Services, 751 F. App'x 398, 400 (4th Cir. 218). The United States Supreme Court held in Lewis that inmates must be provided "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Lewis, 518 U.S. at 351 (quotation omitted). The right to access the courts extends to direct criminal appeals, habeas corpus proceedings, and civil rights actions challenging conditions of confinement. Id. at 354-55. The actual injury requirement mandates that an inmate "demonstrate that a nonfrivolous legal claim had been frustrated or impeded." Id. at 353. "Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration."

[3] To the extent defendants Cooper and Stein assert that plaintiff's action against them in their official capacities should be dismissed for lack of personal jurisdiction, the court is unable to make a determination on this record.

Id. at 355. "The Court in Lewis disclaimed any of the Bounds Court's elaborations upon the right of access to the courts that suggests that the State must enable the prisoner to discover[] grievances, and to litigate effectively once in court." Mayweather v. Guice, No. 1:17-cv-100-FDW, 2020 WL 594503, at *8 (W.D.N.C. Feb. 6, 2020) (internal quotations omitted), aff'd, 806 F. App'x 188 (4th Cir. 2020).

Here, plaintiff has not plead any actual injury. Rather, plaintiff makes the conclusory assertion that he was not properly prepared to litigate his cases and that his petitions were dismissed due to "the fact that [he] could not do the proper research to present [] non-frivolous claims." See (Am. Compl. (DE 6), p. 7). Plaintiff, however, does not point to any specific non-frivolous legal claim which was frustrated or impeded. With respect to the denial of plaintiff's MAR, the Mecklenburg County Superior Court primarily denied the motion as procedurally barred because plaintiff did not raise these claims on direct appeal. Plaintiff, however, was represented by counsel on direct appeal, and, thus, had his counsel's assistance in choosing which claims to pursue. In any event, plaintiff has not identified any claim in his MAR which was frustrated or impeded. Plaintiff likewise was not hindered by his alleged inability to access a law library in pursuing his above-referenced civil rights claim, because the claim was clearly Heck barred. As for plaintiff's habeas action, he simply has not identified any non-frivolous claim which was frustrated or impeded.[4] See Ellis v. Lassiter, No. 18-CT-03046-BO, 2019 WL 5779046, at *6 (E.D.N.C. Nov. 5, 2019) ("[I]n order to state a claim for denial of access to courts, the inmate cannot rely on conclusory allegations;

[4] The court notes that plaintiff references an action he is litigating in this court–James v. Lassiter, No. 19-CT-3074-FL (E.D.N.C.). NCPLS currently is providing plaintiff assistance with discovery in that action. (DE 16, 28). Plaintiff has not alleged any actual injury in connection with this case.

instead, he must identify with specificity an actual injury resulting from official conduct or show his efforts to pursue a legal claim were hindered.") (citations omitted).

Plaintiff, additionally, does not allege any impediment to his ability to communicate with the courts or to filing an action. In fact, plaintiff filed a petition or complaint in the three referenced cases. Notably, NCPLS did not decline to offer plaintiff assistance, but, instead, informed him that it could evaluate his case and provide a legal opinion as to the merits. NCPLS further informed plaintiff that it could offer representation in meritorious cases, and advice regarding cases in which it could not provide assistance. ((DE 1-1), p. 7). Plaintiff, however, makes clear in his amended complaint that he did not want NCPLS to act as his counsel. (Am. Compl. (DE 6), p. 7). Plaintiff, instead, preferred access to a law library. (Id.). This is insufficient to state an access to courts claim. See Lewis, 518 U.S. at 351; Roberts v. Perry, No. 1:17-cv-63-FDW, 2018 WL 2269936, at *2 (W.D.N.C. May 17, 2018), appeal dismissed, 738 F. App'x 191 (4th Cir. 2018). To the extent plaintiff is dissatisfied with NCPLS's inability to provide him with case law to assist him with conducting legal research, the Constitution does not require that NCPLS provide inmates with case law.[5] See Lewis, 518 U.S. at 354; Mayweather, 2020 WL 594503, at *11; Aiken v. Strickland, No. C/A No. 6:19-2690-HMH-KFM, 2019 WL 6330747, at *( (D.S.C. Nov. 4, 2019) (" [T]he Constitution guarantees a right to reasonable access to the courts, not to legal research or a law library."), adopting R&R, 2019 WL 6320175 (Nov. 26, 2019); Roberts, 2018 WL 2269936, at *2.

Finally, plaintiff's conclusory assertions that he was not able to effectively litigate his actions because he did not have access to a law library are insufficient to state an access to courts claim. See

[5] In his complaint, plaintiff asserts that his inability to access a law library prevented him from researching standing. See ((DE 1), p. 6). However, none of the actions identified by plaintiff were dismissed for lack of standing.

Ashcroft, 556 U.S. at 681 (citation omitted); see, e.g., White v. White, 886 F.2d 721, 723 (4th Cir.1989) (stating minimum level of factual support required); see also, See Lewis, No. 518 U.S. at 351. Based upon the foregoing, plaintiff has not alleged any actual injury, or impediment to pursing a non-frivolous claim as required by Lewis, and, thus, fails to state a claim. See Lewis, 518 U.S. at 353; Roberts v. Perry, No. 1:16-cv-34-FDW, 2017 WL 3277122, at *8 (W.D.N.C. Aug. 1, 2017), aff'd 707 F. App'x 777 (4th Cir. 2017). Because plaintiff fails to state an access to court's claim or to provide any evidence in support of his claim, his motion for summary judgment is DENIED.

To the extent plaintiff asserts defendants violated his rights pursuant to the Eighth Amendment to the United States Constitution or the Equal Protection Clause of the Fourteenth Amendment, plaintiff provides no facts to support these claims. See Ashcroft, 556 U.S. at 678–79 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice [to state a plausible claim to relief]. . . "); White, 886 F.2d at 723; see also, Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001). Thus, these claims are DISMISSED." See 28 U.S.C. § 1915(e)(2)(B)(i)(ii) (stating that the Prison Litigation Reform Act directs the court to dismiss a prisoner's complaint at any time "if the court determines that . . . the action . . . is frivolous . . . [or] fails to state a claim on which relief may be granted.").

To the extent plaintiff requests to bring this action as a class action, his request is DENIED. See (DE 22). The Fourth Circuit Court of Appeals does not allow for certification of a class where a *pro se* litigant will act as representative of that class because it is plain error for a *pro se* litigant to represent other inmates in a class action. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) (per curiam). Because plaintiff is proceeding *pro se*, he may not proceed in this case as a class action.

## CONCLUSION

In summary, plaintiff's motion to proceed as a class action (DE 22) is DENIED. Plaintiff's Eighth Amendment and Equal Protection claims are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Defendants' motion to dismiss plaintiff's official capacity claims for monetary damages and for failure to state a claim pursuant to Rule 12(b)(6) (DE 35) is GRANTED, and plaintiff's motion for summary judgment (DE 33) is DENIED. Because the court has determined that plaintiff failed to state a claim upon which relief may be granted as to all defendants, the Clerk of Court is DIRECTED to close this case.

SO ORDERED, this the 6 day of August, 2020.

Terrence Boyle

TERRENCE W. BOYLE
Chief United States District Judge