

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3420

James Ray Davis

Appellant

v.

Christopher Morledge, Judge, St. Francis County Circuit Court (Originally named as Christopher Marledge), et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:18-cv-00183-BSM)

ORDER

The petition for rehearing by the panel is denied.

January 12, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3420

James Ray Davis

Plaintiff - Appellant

v.

Christopher Morledge, Judge, St. Francis County Circuit Court (Originally named as Christopher Marledge); Austin Easley, Prosecutor, St. Francis County; John Houseal, Prosecutor, St. Francis County; Bette S. Green, Circuit Court Clerk, St. Francis County; Gary Mitctusson; Public Defender, St. Francis County; Fletcher Long, Prosecutor, St. Francis County; St. Francis County

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:18-cv-00183-BSM)

JUDGMENT

Before LOKEN, COLLOTON, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a). Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot.

The full \$505 appellate and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court.

December 02, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3420

James Ray Davis

Appellant

v.

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MANDATE

In accordance with the judgment of 12/02/2021, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

January 20, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

**JAMES RAY DAVIS
ADC #143465**

PLAINTIFF

v. **CASE NO. 2:18-CV-00183 BSM**

CHRISTOPHER MORLEDGE, et al.

DEFENDANTS

ORDER

Plaintiff James Ray Davis filed this *pro se* civil rights complaint alleging that he was wrongly convicted. *Id.* Davis alleges that at his plea hearing, Judge Morledge did not call out the case numbers for the charges to which Davis was pleading guilty. Davis states he realized when he got his “sentence order” that he had been convicted and sentenced in a case in which he had never seen a judge and did not intend to plead guilty. Doc. No. 2.

Davis is incarcerated at the Ouachita River Unit of the Arkansas Department of Correction, which triggers automatic screening of his complaint. *See* 28 U.S.C. § 1915A. This screening determines whether the stated cause of action (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) & 1915(A). An action is frivolous if it “lacks an arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim on which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

There is no indication that Davis's conviction or sentence has been reversed on appeal, declared invalid, expunged, or called into question by the issuance of a federal *habeas* writ; therefore, Davis's damages claim is barred. *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994)(holding a state prisoner cannot bring an action for damages where a judgment in his favor would necessarily imply the invalidity of his conviction or sentence).

Davis also cannot obtain the other relief he seeks, release from prison, in this 42 U.S.C. section 1983 action. For that relief, Davis must file a federal *habeas* petition. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

Accordingly, Davis's complaint fails to state a claim on which relief may be granted, and his complaint is dismissed without prejudice. An *informa pauperis* appeal of this order and accompanying judgment would not be taken in good faith. This dismissal counts as a “strike” for the purposes of 28 U.S.C. § 1915(g).

The clerk is directed to change the docket and style of the case from *James Ray Davis v. Christopher Marledge, et al.*, to *James Ray Davis v. Christopher Morledge, et al.*

IT IS SO ORDERED this 8th day of January 2019.



UNITED STATES DISTRICT JUDGE