No. _____

IN THE

SUPREME COURT OF THE UNITED

STATES

In re JONATHAN E. MANWELL

APPENDICES

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs. Case No. 2015-2139-FC

JONATHAN ERNEST MANWELL,

Defendant.
_____/

OPINION AND ORDER

This matter is before the Court on Defendant Jonathan Manwell's motion to verify trial transcripts and motion for *Ginther*[1] hearing, for discovery, and for documents.

On May 20, 2016, a jury convicted Defendant Jonathan Manwell (defendant) of three counts of first-degree criminal sexual conduct (CSC I), contrary to MCL 750.520b, and two counts of second-degree criminal sexual conduct (CSC II), contrary to MCL 750.520c. On June 28, 2016, the Court sentenced defendant to a prison term of 15-30 years for the CSC I convictions and 10-15 years for the CSC II convictions, to be served concurrently. Defendant filed a timely claim of appeal, which the Court of Appeals denied. See *People v Manwell*, unpublished per curiam opinion of the Court of Appeals, issued February 22, 2018 (Docket No. 333916). Defendant's motion for reconsideration was denied on March 28, 2018, and defendant then filed an application for leave to appeal with the Supreme Court on April 18, 2018, which is currently pending. Defendant then filed the instant motions.

In support of his motions, defendant essentially makes lengthy factual allegations concerning his termination of parental rights case and the instant criminal case. Defendant

argues that his attorneys worked against him to sabotage his civil and criminal cases. Defendant contends that the prosecution made false allegations of fact in both proceedings. Defendant avers that his attorney failed to ask about the complaining witness's forensic exam and failed to object to the prosecution's allegations and witnesses. Defendant argues that evidence presented at his termination of parental rights trial proves his innocence and impeaches the complaining witness's testimony. Defendant contends that he needs access to the criminal case records and supplemental discovery in order to create an accurate record in postconviction proceedings. Finally, defendant avers that the trial transcripts are inaccurate and he requests their verification.

The prosecution has not filed a response.

The court first addresses defendant's request for an evidentiary hearing on the issue of ineffective assistance of counsel. "Both the Michigan and the United States Constitutions require that a criminal defendant enjoy the assistance of counsel for his or her defense." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012) (citing Const 1963, art 1, § 20; US Const, Am VI). "There is a presumption that counsel was effective, and a defendant must overcome the strong presumption that counsel's challenged actions were sound trial strategy." *People v Cooper*, 309 Mich App 74, 80; 867 NW2d 452 (2015). Further, a reviewing court shall "not substitute [its] judgment for that of counsel on matters of trial strategy, nor [shall it] use the benefit of hindsight when assessing counsel's competence." *People v Unger*, 278 Mich App 210, 242–243; 749 NW2d 272 (2008). "A failed strategy does not constitute deficient performance." *People v Petri*, 279 Mich App 407, 412; 760 NW2d 882 (2008). But "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. . . . [C]ounsel has a

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). The mere fact that an expert is not "called as a witness by the defense does not show that one was never consulted or retained. Additionally, counsel's decision whether to retain an expert witness is a matter of trial strategy." *People v Bass*, 317 Mich App 241, 279; 893 NW2d 140 (2016).

Ultimately, to establish a claim of ineffective assistance of counsel, a defendant must show both that his counsel's performance was objectively unreasonable in light of prevailing professional norms, and that defendant was prejudiced as a result of his counsel's inadequate performance. *People v Walker*, 497 Mich 894, 895; 855 NW2d 744 (2014), citing *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). A defendant is prejudiced if there is a reasonable probability that, but for his counsel's performance, the proceedings would have rendered a different result. *People v Gaines*, 306 Mich App 289, 300; 856 NW2d 222 (2014).

In the case at bar, defendant's memorandum essentially establishes his version of events from the instant criminal case and the related termination of parental rights case. Defendant had many court-appointed attorneys throughout his criminal trial and appellate proceedings, but he does not identify any attorney by name when making allegations of ineffective assistance. Many of defendant's allegations appear to correspond with the allegations in defendant's claim of appeal, which are not supported by the record. See *People v Manwell*, unpublished per curiam opinion of the Court of Appeals, issued February 22, 2018 (Docket No. 333916), p 18. Further, aside from general statements that defendant's counsel worked to sabotage his case, the most specific allegation of ineffective assistance that the Court can discern is defendant's generic claim that his counsel would not consult an expert or subpoena any records or witnesses.

Here, defendant does not propose what type of expert his attorney should have consulted, or how failure to consult such an expert was objectively unreasonable in light of prevailing professional norms. And while defendant refers to a forensic exam and certain testimony elicited at the termination of parental rights proceedings as exculpatory evidence that should have been presented in his criminal case, defendant has provided no rationale why a *Ginther* hearing would be necessary to develop a factual basis concerning these generalized claims of ineffective assistance, or why failure to subpoena specific records or witnesses was objectively unreasonable and prejudicial. Because defendant has simply announced his general position without an explanation of what record he could potentially develop related to his ineffective assistance claims, the Court concludes that a *Ginther* hearing is properly denied at this time.

The Court next addresses defendant's request for records and discovery. MCR 6.433 governs a defendant's access to records associated with his or her criminal conviction. MCR 6.433 provides, in pertinent part:

> (B) An indigent defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.
>
> (1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.
>
> (2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.
>
> * * *
>
> (C) Other Postconviction Proceedings. An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.
>
> (1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue

> postconviction remedies in a state or federal court and are not otherwise available to the defendant.
>
> (2) If the documents or transcripts have been filed with the court and not provided previously to the defendant, the clerk must provide the defendant with copies of such materials without cost to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

MCR 6.433(B) and (C).

In the case at bar, defendant has filed an application for leave to appeal to the Michigan Supreme Court, which is currently pending. Accordingly, the requested records are not required to prepare an application for leave to appeal under MCR 6.433(B). In correlation with his request for records, defendant has filed a motion for an evidentiary hearing on alleged ineffective assistance of counsel. Upon review of the record, however, it is clear that the complete court file has already been provided to defendant's appellate counsel, and defendant has not demonstrated good cause as to why the clerk must provide another copy without cost. See MCR 6.433(C)(2). Defendant's own exhibits demonstrate that former appellate counsel is willing to provide all records, but has requested that defendant identify a friend or family member outside of prison who may receive the records on his behalf because they are in electronic format. Defendant's Memorandum, Exhibit H. In light of the foregoing, the Court concludes that defendant has not satisfied the threshold requirements of MCR 6.433(C), and the Court declines to grant the requested relief unless and until good cause has been shown.

Defendant also requests discovery pursuant to MCR 6.201(A) and (B). MCR 6.201 controls discovery in criminal cases. MCR 6.201(A) governs mandatory disclosures upon request by either party, while MCR 6.201(B) governs discovery of information known to the prosecution upon request by the defendant. But defendant has not cited any supporting authority for his position that the Court must authorize discovery after defendant has been convicted and

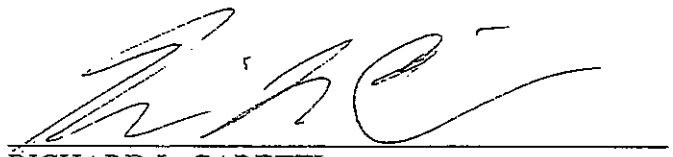
sentenced. Defendant is currently seeking appellate relief, which is based on the original record. See MCR 7.310(A). And to the extent that defendant may seek post-appeal relief, subchapter 6.500 controls, and MCR 6.507 specifically controls the Court's authority to expand the record. But defendant has not filed a motion in accordance with subchapter 6.500, and any request for discovery under MCR 6.201 is properly denied.

Finally, defendant requests verification of his trial proceeding transcripts. Trial transcripts are presumed accurate. *People v Abdella*, 200 Mich App 473, 475; 505 NW2d 18 (1993). But this presumption may be overcome if a defendant satisfies the following requirements: (1) seasonably seek relief from the trial court; (2) assert with specificity the alleged inaccuracy; (3) provide some independent corroboration of the asserted inaccuracy; and (4) describe how the claimed inaccuracy in transcription has adversely affected the ability to secure postconviction relief. *Id.* at 475-476.

In support of the present motion to verify transcripts, defendant provides a recitation of facts concerning the history of his termination of parental rights proceedings as well as his criminal proceedings. But defendant does not identify any portion of the criminal transcripts that are inaccurate. Rather, defendant challenges the veracity of the testimony provided and the weight of the evidence presented. The Court therefore concludes that defendant has failed to overcome the presumption that the criminal trial transcripts are an accurate representation of the testimony presented at trial, and this motion is properly denied.

For the reasons set forth above, defendant's motions are DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.



RICHARD L. CARETTI
Circuit Court Judge

Dated: August 10, 2018

cc: Eric Smith, Macomb County Prosecutor
Jonathan Manwell, Defendant In Pro Per

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs. Case No. 2015-2139-FC

JONATHAN ERNEST MANWELL,

Defendant.
_____/

OPINION AND ORDER

This matter is before the Court on Defendant Jonathan Manwell's motion for reconsideration of the Court's August 10, 2018 *Opinion and Order*. The Court relies on the background information provided in that *Opinion and Order*.

For the Court to grant a motion for reconsideration, "[t]he moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). A motion for reconsideration "which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted." *Id.* "The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties." *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). "The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000).

In support of his motion, Defendant Jonathan Manwell (defendant) again makes lengthy factual allegations about his criminal case and the conduct of the attorneys involved. Defendant argues that the complaining witness's testimony was coached and impeached. Defendant essentially challenges the sufficiency of the evidence supporting his conviction, citing multiple conflicting accounts by multiple witnesses. Defendant contends that he needs the transcripts from the termination case and the district court proceedings in addition to the instant criminal proceedings. Defendant further avers that verification of the transcripts is necessary to demonstrate that the cases have no merit based on the presumed and missing evidence.

Defendant raises substantially the same arguments in his motion for reconsideration that he raised in his original motion to verify trial transcripts and motion for *Ginther*[1] hearing, for discovery, and for documents. Defendant has merely presented the same facts and raised the same issues already ruled upon by the Court, either expressly or by reasonable implication. Accordingly, defendant's motion for reconsideration is properly denied. The Court therefore concludes that there is no palpable error by which the Court and the parties have been misled.

For the reasons set forth above, defendant's motion is DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and this case remains closed.

IT IS SO ORDERED.

RICHARD L. CARETTI
Circuit Court Judge

Dated: October 15, 2018

cc: Eric Smith, Macomb County Prosecutor
Jonathan E. Manwell, Defendant In Pro Per

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Court of Appeals, State of Michigan

ORDER

People of MI v Jonathan Ernest Manwell

Docket No. 345620

LC No. 2015-002139-FC

Colleen A. O'Brien
Presiding Judge

Kathleen Jansen

Elizabeth L. Gleicher
Judges

The Court orders that the motion to waive fees is GRANTED for this appeal only.

The motion to withdraw the motion for abeyance is GRANTED.

The motion to amend the brief on appeal is GRANTED.

The motion for a copy of the record in LC No 2015-000074-NA is DENIED.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 23 2019
Date

Chief Clerk

Order

May 28, 2019

159146 & (17)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 159146
COA: 345620
Macomb CC: 2015-002139-FC

JONATHAN ERNEST MANWELL,
Defendant-Appellant.

/

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the January 23, 2019 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Court of Appeals, State of Michigan

ORDER

In re Manwell

Docket No. 341965

LC No. 2015-002139-FC

Jonathan Tukel
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

The Court orders that the complaint for superintending control is DENIED.

Jonathan Tukel
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 29 2018
Date

Jerome W. Zimmer Jr.
Chief Clerk

Order

February 4, 2019

157985 & (30)

In re MANWELL

JONATHAN ERNEST MANWELL,
Plaintiff-Appellant,

v

MACOMB CIRCUIT COURT,
Defendant-Appellee.

SC: 157985
COA: 341965

/

On order of the Court, the application for leave to appeal the May 29, 2018 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for miscellaneous relief is DENIED.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 4, 2019

Clerk

s0128

Order

May 28, 2019

157985(35)

In re MANWELL

JONATHAN ERNEST MANWELL,
Plaintiff-Appellant,

v

SC: 157985
COA: 341965

MACOMB CIRCUIT COURT,
Defendant-Appellee.

/

On order of the Court, the motion for reconsideration of this Court's February 4, 2019 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

s0520

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 28, 2019

Clerk

Order

July 1, 2020

157563 & (116)(117)(118)(119)(120)(122)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JONATHAN ERNEST MANWELL,
Defendant-Appellant.

SC: 157563
COA: 333916
Macomb CC: 2015-002139-FC

/

By order of November 26, 2019, the prosecuting attorney was directed to answer the application for leave to appeal the February 22, 2018 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. The motion to amend the defendant's reply brief is GRANTED. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Parts III and IV of the judgment of the Court of Appeals regarding the testimony of the Children's Protective Services worker and Detective Newman, and we REMAND this case to the Court of Appeals for reconsideration in light of *People v Thorpe*, 504 Mich 230 (2019), and *People v Harbison*, 504 Mich 230 (2019). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court. The motions for documents, to challenge transcripts, for discovery, to compel testimony, and to remand are DENIED.

Order

Michigan Supreme Court
Lansing, Michigan

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

April 2, 2021

162238 & (148)(149)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 162238
COA: 333916
Macomb CC: 2015-002139-FC

JONATHAN ERNEST MANWELL,
Defendant-Appellant.

/

On order of the Court, the application for leave to appeal the October 29, 2020 judgment of the Court of Appeals is considered and, it appearing to this Court that the case of *People v Hawkins* (Docket No. 161243) is pending on appeal before this Court and that the decision in that case may resolve an issue raised in the present application for leave to appeal, we ORDER that the application be held in ABEYANCE pending the decision in that case.

The motions to amend the application and to expand the record remain pending.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 2, 2021

Clerk

s0330

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN E. MANWELL #964587,

Plaintiff,

v.

GERALDINE P. HARRIS,

Defendant.
_____/

Hon. Sally J. Berens

Case No. 1:21-cv-745

ORDER TO PROCEED IN FORMA PAUPERIS WITHOUT PAYMENT OF AN INITIAL FEE

Plaintiff has sought leave to proceed *in forma pauperis* in compliance with 28 U.S.C. § 1915(a). The Court grants his motion. The Court must nevertheless require payment of the entire filing fee in installments, in accordance with 28 U.S.C. § 1915(b)(1). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997); *Hampton v. Hobbs*, 106 F.3d 1281 (6th Cir. 1997). The civil action filing fee is $350.00 when leave to proceed *in forma pauperis* is granted. Any subsequent dismissal of Plaintiff's case, even if voluntary, does not negate Plaintiff's responsibility to pay the fee. *McGore*, 114 F.3d at 607.

Normally, a Plaintiff must pay a portion of the $350.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had no funds in his account during the period in question. In addition, plaintiff's affidavit indicates that he has no assets. Therefore, the Court will not require plaintiff to pay an initial partial filing fee. *McGore*, 114 F.3d at 606 (citing 28 U.S.C. § 1915(b)(1)).

However, plaintiff is not relieved from paying the $350.00 filing fee when funds become available. *McGore*, 114 F.3d at 606. Plaintiff must pay the $350.00 filing fee through monthly payments of 20 percent of the preceding month's income credited to plaintiff's prison trust fund account. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 606. These payments will be forwarded by the agency having custody of the prisoner to the Clerk of this Court each time the amount in plaintiff's trust account exceeds $10.00, until the filing fee of $350.00 is paid in full. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607; *Hampton*, 106 F.3d at 1284. The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in plaintiff's account is $10.00 or less, no payment is required for that month. *Hampton*, 106 F.3d at 1284-85.

The Court shall review the case pursuant to 28 U.S.C. §§ 1915(e), 1915A and/or 42 U.S.C. § 1997e(c)(1), as appropriate. After the Court reviews the case, the Court will determine whether dismissal or service of process is appropriate, and will fashion an order accordingly. Should the case be dismissed, voluntarily by Plaintiff or by the Court, Plaintiff shall remain responsible for the filing fee. *McGore*, 114 F.3d at 607. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States should Plaintiff prevail.

Once service of process has been ordered, Plaintiff shall serve upon Defendant, or if an appearance has been entered by an attorney, upon the attorney, a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to Defendant or the attorney. Any paper received by a district

judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court. Accordingly,

IT IS ORDERED that leave to proceed *in forma pauperis* is granted and plaintiff may proceed *in forma pauperis* without payment of an initial partial filing fee. Plaintiff will remain liable for the filing fee of $350.00 as funds become available.

IT IS FURTHER ORDERED that the agency having custody of plaintiff shall collect the remaining filing fee of $350.00. As outlined above, each month that the amount in plaintiff's account exceeds $10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from plaintiff's prisoner account until the entire remaining filing fee of $350.00 is paid.

Date: August 27, 2021

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN E. MANWELL,

Plaintiff,

v.

GERALDINE P. HARRIS,

Defendant.
_____/

Case No. 1:21-cv-745

Honorable Sally J. Berens

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Plaintiff previously sought and was granted leave to proceed *in forma pauperis*. (ECF No. 4.) Pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, Plaintiff consented to proceed in all matters in this action under the jurisdiction of a United States magistrate judge. (ECF No. 5.)

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Earnest C. Brooks Correctional Facility (LRF) in Muskegon Heights, Muskegon County, Michigan. The events about which he complains occurred at that facility. Plaintiff sues Librarian Geraldine P. Harris.

Plaintiff alleges that Defendant Harris denied him "access to legal research materials due to lack of funds." (ECF No. 1, PageID.3.) He avers that because of this lack of access, he was "delayed in his filing and unable to perfect his amended application for leave to appeal." (*Id.*) Plaintiff claims he also experienced delay in "filing motions and amending filed complaints with new evidence." (*Id.*)

As background, Plaintiff alleges that Defendant Harris previously "damaged and destroyed documents sent by [him] to be copied; this includes original, irreplaceable court documents." (*Id.*) According to Plaintiff, Defendant Harris first claimed that he was lying, but then stated that Plaintiff was "merely copying such documents for his own person[al] use and 'filling his locker with them.'" (*Id.*) Plaintiff indicates this is relevant information because he "does have deadlines, in an already urgent situation, and [Defendant Harris] continuously delays copies believing that they are merely 'personal.'" (*Id.*)

Plaintiff also references a memorandum issued on October 26, 2020, that indicated that individuals with an active case were able to access the law library. (*Id.*) Plaintiff avers he "had to file his said application without such access." (*Id.*) Plaintiff alleges that, instead of granting access to the law library, Defendant Harris sent out segregation law library request forms, which he claims are helpful only if "one knows the required rule, material[,] or case law." (*Id.*, PageID.4.) He

claims that after inmates submitted those forms, Defendant Harris "decided to start charging for the requested legal materials, while still denying access to the law library itself." (*Id.*)

Plaintiff claims that, during this time, Defendant Harris "published and distributed letters for the Michigan Court of Appeals to toll filing deadlines due to COVID-19." (*Id.*) These letters omitted the relevant Michigan Court Rules, and Plaintiff asked "how one could get the correct rule without knowing it or not having the monies in one's account." (*Id.*) A second letter "then addressed the Court of Appeals yet referenced subchapter 7.300, which is reserved solely for the Michigan Supreme Court." (*Id.*) Plaintiff sent a kite to Defendant Harris "stating the error and the fact that there are two different rules under subchapter 7.200, because there are appeals by both right and leave in the Court of Appeals." (*Id.*) Plaintiff claims that these letters were Defendant Harris's "way of telling inmates that they must toll their filing deadlines because she was not going to grant access to any legal research materials." (*Id.*)

Plaintiff avers that the "Michigan Supreme Court did not mandate all persons to toll their filing deadlines, but rather offered the option." (*Id.*, PageID.5.) He avers that he "will not delay any filing for any reason" because of the circumstances of his case. (*Id.*) Plaintiff informed Defendant Harris that individuals who had already filed a case "would have to file a motion to stay proceedings and hold the application for leave to appeal (or appeal by right) in abeyance." (*Id.*) Plaintiff asserts that he will not file such a motion for any reason, "especially not for someone who does not want to perform the job for which they are compensated." (*Id.*)

Plaintiff seeks damages or, alternatively, "the withheld transcripts, documents[,] and evidence required for [his] post-conviction relief." (*Id.*, PageID.8.)

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *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."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because Section 1983 is a method for vindicating

federal rights, not a source of substantive rights itself, the first step in an action under Section 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

It is well established that prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The principal issue in *Bounds* was whether the states must protect the right of access to the courts by providing law libraries or alternative sources of legal information for prisoners. *Id.* at 817. The Court further noted that, in addition to law libraries or alternative sources of legal knowledge, the states must provide indigent inmates with "paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them." *Id.* at 824–25. The right of access to the courts also prohibits prison officials from erecting barriers that may impede the inmate's access to the courts. *See Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992).

An indigent prisoner's constitutional right to legal resources and materials is not, however, without limit. In order to state a viable claim for interference with his access to the courts, a plaintiff must show "actual injury." *Lewis v. Casey*, 518 U.S. 343, 349 (1996); *see also Talley-Bey v. Knebl*, 168 F.3d 884, 886 (6th Cir. 1999); *Knop*, 977 F.2d at 1000. In other words, a plaintiff must plead and demonstrate that the shortcomings in the prison legal assistance program or lack of legal materials have hindered, or are presently hindering, his efforts to pursue a nonfrivolous legal claim. *Lewis*, 518 U.S. at 351–53; *see also Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). The Supreme Court has strictly limited the types of cases for which there may be an actual injury:

> *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order

> to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Lewis, 518 U.S. at 355. "Thus, a prisoner's right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc). Moreover, the underlying action must have asserted a non-frivolous claim. *Lewis*, 518 U.S. at 353; *accord Hadix v. Johnson*, 182 F.3d 400, 405 (6th Cir. 1999) (*Lewis* changed actual injury to include requirement that action be non-frivolous).

In addition, the Supreme Court squarely has held that "the underlying cause of action . . . is an element that must be described in the complaint, just as much as allegations must describe the official acts frustrating the litigation." *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (citing *Lewis*, 518 U.S. at 353 & n.3.) "Like any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant." *Id.*

Here, Plaintiff vaguely states that Defendant Harris's denial of access to legal materials impeded his ability to "perfect his amended application for leave to appeal," as well as delayed him in "filing motions and amending filed complaints with new evidence." (ECF No. 1, PageID.3.) Moreover, in his request for relief, he references seeking post-conviction relief. (*Id.*, PageID.8.) Plaintiff's complaint, however, is devoid of facts describing the underlying cause of action he was allegedly frustrated in pursuing by Defendant Harris's actions. Plaintiff also fails to describe the nonfrivolous claims that he could not pursue in the underlying action. *Lewis*, 518 U.S. at 353; *Hadix*, 182 F.3d at 405. Plaintiff also fails to describe the remedy lost due to Defendant Harris's alleged actions. *See Christopher*, 536 U.S. at 415. Indeed, Plaintiff suggests that he could have requested his filing deadlines be tolled by the Michigan Court of Appeals due to lack of access to legal materials because of the COVID-19 pandemic, but that he chose not to file a motion

requesting such relief. Given the lack of information regarding the underlying action, the Court concludes that Plaintiff has not set forth a plausible First Amendment access to the courts claim against Defendant Harris. His claim, therefore, will be dismissed.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Although the Court concludes that Plaintiff's claim is properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610–11, unless Plaintiff is barred from proceeding *in forma pauperis*, *e.g.*, by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: January 26, 2022

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN E. MANWELL,

Plaintiff,

v.

GERALDINE P. HARRIS,

Defendant.
/

Case No. 1:21-cv-745

Honorable Sally J. Berens

JUDGMENT

In accordance with the opinion issued this date:

IT IS ORDERED that Plaintiff's action is **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and 42 U.S.C. § 1997e(c).

Dated: January 26, 2022

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge

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