

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14393-J

APPX. A

ROBERT L. DAVIS,

Plaintiff-Appellant,

versus

JULIAN HOLT,
Public Defender,
JANE DOWE,
Assistant Public Defender,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, NEWSOM, and BRANCH, Circuit Judges.

BY THE COURT:

Robert L. Davis, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court assessed the \$505.00 appellate filing fee, pursuant to the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. The district court then certified that this appeal is frivolous and not taken in good faith.

Because the district court already has assessed the required filing fee, the only remaining issue in this case is whether an appeal would be frivolous. *See* 28 U.S.C. § 1915(e)(2)(B). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 20, 2022

Robert L. Davis
Graceville CF - Inmate Legal Mail
5168 EZELL RD
GRACEVILLE, FL 32440

APPX B

Appeal Number: 21-14393-J
Case Style: Robert Davis v. Julian Holt, et al
District Court Docket No: 8:21-cv-01628-MSS-SPF

The district court has denied your motion to proceed on appeal in forma pauperis, certifying that your appeal is frivolous and not taken in good faith. The district court has also directed that you pay fees required to maintain this appeal pursuant to 28 U.S.C. § 1915 (as amended by the Prison Litigation Reform Act).

Pursuant to Fed.R.App.P. 24(a) and 11th Cir. R 24-2, you must file a motion for leave to proceed with this appeal within thirty (30) days from the date of this letter. If such a motion is not received within thirty (30) days, this appeal will be dismissed by the clerk without further notice pursuant to 11th Cir. R. 42-2.

Certificate of Interested Persons and Corporate Disclosure Statement ("CIP")

Every motion, petition, brief, answer, response, and reply must contain a CIP. See FRAP 26.1; 11th Cir. R. 26.1-1. In addition:

- Appellants/Petitioners must file a CIP within 14 days after this letter's date.
- Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after this letter's date, regardless of whether Appellants/Petitioners have filed a CIP.
- Only parties represented by counsel must complete the web-based CIP. Counsel must complete the web-based CIP, through the Web-Based CIP link on the Court's website, on the same day the CIP is first filed.

The failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. See 11th Cir. R. 26.1-5(c).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. DAVIS,
Plaintiff,

v.

Case No. 8:21-cv-1628-MSS-SPF

JULIAN HOLT and JANE DOWE,
Defendants.

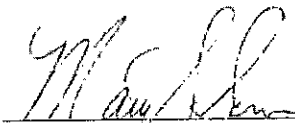
ORDER

THIS CAUSE comes before the Court on Plaintiff's motion for leave to appeal *in forma pauperis*. (Doc. 13). This civil rights action was dismissed without prejudice on November 18, 2021 (Doc. 9), because Plaintiff sued only a public defender and an assistant public defender — individuals who are not subject to suit under 42 U.S.C. § 1983 because they are not “state actors.” See *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Holt v. Crist*, 233 F. App'x 900, 903 (11th Cir. 2007).

There are no non-frivolous issues to raise on appeal. Therefore, Plaintiff's appeal is not taken in good faith under Rule 24(a)(3), Federal Rules of Appellate Procedure. Plaintiff is not entitled to appeal as a pauper, and he is assessed the full appellate filing fee.

Accordingly, it is **ORDERED** that Plaintiff's motion for leave to appeal *in forma pauperis* (Doc. 13) is **DENIED**.

DONE and **ORDERED** in Tampa, Florida on January 13, 2022.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. DAVIS,

Plaintiff,

v.

Case No. 8:21-cv-1628-MSS-SPF

JULIAN HOLT and JANE DOWE,

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff's motion to amend his complaint (Doc. 3) and his amended civil rights complaint (Doc. 8). Plaintiff is a prisoner proceeding *pro se*. After liberal review, pursuant to 28 U.S.C. § 1915A, and viewing the Complaint in the light most favorable to Plaintiff, the Court finds Plaintiff has failed to state a claim under 42 U.S.C. § 1983.

Plaintiff sues Public Defender Julian Holt and an unnamed Assistant Public defender in connection with the Assistant Public Defender's representation of Plaintiff in state-criminal cases. However, "[s]ection 1983 provides judicial remedies to a claimant who can prove that a person acting under color of state law committed an act that deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States." *See Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 (11th Cir. 1995). Public defenders are not subject to suit under section 1983 because they are not state actors. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981) (public defenders are not state actors for purposes of the statute); *Holt v. Crist*, 233 F. App'x 900, 903 (11th Cir. 2007) (defense attorneys are not state actors

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who can be held liable under section 1983). Therefore, the case is dismissed, as leave to amend would be futile. *See Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007).


Accordingly, it is **ORDERED** that:

1. Plaintiff's motion to amend his complaint (Doc. 3) is **GRANTED** to the extent his subsequently filed amended complaint (Doc. 8) is accepted as filed.

2. This case is **DISMISSED** without prejudice for failure to state a claim. *See* 28 U.S.C. § 1915A(b)(1).

2. The Clerk of Court is directed to enter judgment accordingly, terminate any pending motions, and **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida on November 18, 2021.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. DAVIS,

Plaintiff,

v.

Case No. 8:21-cv-1628-MSS-SPF

JULIAN HOLT and JANE DOWE,

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff's Consent form and financial certificate (Doc. 5), which the Court construes as a motion to proceed *in forma pauperis*.

Upon consideration, it is **ORDERED** that:

1. Plaintiff's request to proceed *in forma pauperis* (Doc. 5) is **GRANTED** to the extent that the case may proceed without the *prepayment* of the entire filing fee.
2. Because Plaintiff has less than a \$10.00 balance in his prison trust fund account, the Court will not require Plaintiff to pay an initial partial filing fee. However, Plaintiff is hereby assessed the total \$350.00 filing fee in this case.
3. As funds become available in Plaintiff's prison account, he shall be required to make monthly payments of twenty percent of the proceeding month's income (that is, all funds deposited into the account) credited to the account. Upon receipt of this Order, the agency having custody of Plaintiff shall forward payments from his account on a monthly basis to the Clerk of Court each time the amount in the account exceeds \$10. The following information shall either be included on the face of the check from the penal institution, cashier's check, or

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money order or attached thereto: (1) the full name of the prisoner; (2) the prisoner's inmate number (652400); and (3) the Middle District of Florida Case Number (8:21-cv-01628-MSS-SPF). Checks or money orders which do not have this information will be returned to the penal institution.

4. Plaintiff is warned that he is ultimately responsible for payment of the filing fee if the agency with custody over him lapses in its duty to make payments on his behalf. For this reason, if Plaintiff is transferred to another jail or correctional institution, Plaintiff should ensure that the new institution is informed about this lawsuit and the required monthly payments as set out herein. Plaintiff is advised to retain a copy of this Order for this purpose.

5. The Clerk of Court shall mail a copy of this order to Florida Department of Corrections, Inmate Trust Fund, Centerville Station, P.O. Box 12100, Tallahassee, FL 32317-2100, Attention Professional Account Supervisor.

ORDERED in Tampa, Florida on October 14, 2021.


SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE