[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-14351

Non-Argument Calendar

DOUGLAS MARSHALL JACKSON,

Plaintiff-Appellant,

versus

MARK INCH,
Individual and Official Capacity as Secretary,
J. BALDRIDGE,
Individual and Official Capacity as Warden,
R SCHMITT,
Individual and Official Capacity as Assistant Warden,
JOHNNY FRAMBO,
Individual and Official Capacity as D/B/A Chaplaincy
Services Administrator for Fl Department of Corrections,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:21-cv-00255-TPB-PRL

Before GRANT, TJOFLAT, and ANDERSON, Circuit Judges.

PER CURIAM:

Douglas Jackson, a prisoner proceeding *pro se*, appeals from the District Court's *sua sponte* dismissal of his amended complaint against former Secretary of the Florida Department of Corrections ("FDOC") March Inch, prison officials J. Baldridge, R. Schmitt, and Johnny Frambo, and the FDOC, as frivolous, malicious, and insufficient to state a claim. His complaint raised violations of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1 and 42 U.S.C. § 1983, and purported to raise claims under 18 U.S.C. §§ 242 and 247.[1]

Jackson makes four arguments on appeal: (1) the District Court erred by dismissing his complaint for failure to state a claim; (2) the District Court erred by failing to enforce the Establishment

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[1] On appeal, Jackson has abandoned all his claims besides those raised under RLUIPA.

Clause and sovereignty of his religious group; (3) the District Court abused its discretion by denying his petition for a writ of mandamus; and (4) the District Court abused its discretion by denying his motion for a preliminary injunction. [2] We consider each argument in turn.

I.

Courts must review, before docketing or as soon as practicable after docketing, any civil complaint in which a prisoner seeks redress from a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. *Id.* (b)(1). We review *de novo* a district court's *sua sponte* dismissal for failure to state a claim pursuant to § 1915A(b)(1) and apply the same standard used for dismissals pursuant to Fed. R. Civ. P. 12(b)(6). *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278-79 (11th Cir. 2001).

An appellant abandons any argument not briefed before us, made in passing, or raised briefly without supporting arguments or authority. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004); *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678,

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[2] We note that Jackson moves to substitute the current FDOC Secretary, Ricky Dixon for Inch in his official capacity. We conclude that an order substituting Dixon is unnecessary here because Dixon was automatically substituted for Inch in his official capacity when Inch resigned as secretary. Fed. R. App. P. 43(c)(2). We deny the motion without further discussion.

681 (11th Cir. 2014). To obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must argue that each ground is incorrect: if he fails to challenge any ground on appeal, the judgment is due to be affirmed. *See Sapuppo*, 739 F.3d at 680.

Here, Jackson does not argue on appeal that the court abused its discretion by finding that his complaint was frivolous or malicious and has thus abandoned any argument on those issues. *See Access Now, Inc.*, 385 F.3d at 1330. Because he does not challenge on appeal two of the court's independent grounds for the dismissal of his complaint, we affirm that dismissal. *See Sapuppo*, 739 F.3d at 680. Furthermore, his assertions that the defendants burdened his religious exercise and that he was denied group worship services were conclusory. *See Oxford Asset Mgmt. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

II.

Jackson has abandoned his arguments that the court failed to enforce the Establishment Clause or the sovereignty of his religious group by failing to provide supporting arguments. *See Sapuppo*, 739 F.3d at 681.

III.

We review the denial of a petition for a writ of mandamus for an abuse of discretion. *See Kerr v. U.S. Dist. Ct. for N. Dist.*, 426 U.S. 394, 403 (1976). A writ of mandamus is a drastic remedy that is solely invoked in extraordinary situations. *Id.* at 402. The

writ should issue solely where the party seeking it has no other means of obtaining the relief he desires and shows that his right to issuance of the writ is clear and indisputable. *Id.* at 403.

Here, Jackson has abandoned any argument that the court erred by denying his petition for a writ of mandamus by failing to raise supporting arguments and authorities. *See Sapuppo*, 739 F.3d at 681. Furthermore, he failed to indisputably establish that he lacked any other means of obtaining relief or that he was entitled to issuance of the writ. *See Kerr*, 426 U.S. at 403.

IV.

We review the denial of a motion for a preliminary injunction for an abuse of discretion. *See Sierra Club v. Georgia Power Co.*, 180 F.3d 1309, 1310 (11th Cir. 1999). To receive a preliminary injunction, a movant must demonstrate that he (1) is likely to succeed on the merits, (2) will be irreparably injured if the injunction is denied, (3) is threatened by an injury greater than the injury the opposing party may suffer from an injunction, and (4) is requesting an injunction that would not be against the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). A movant must clearly meet his burden of persuasion on each element. *Id.* Finally, a finding that a complaint fails to state a claim moots any issues regarding a preliminary injunction. *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1330 n.3 (11th Cir. 2015).

Here, Jackson has abandoned any argument that the district court abused its discretion by denying his motion for a preliminary injunction because he has failed to provide supporting arguments and authorities. *See Sapuppo*, 739 F.3d at 681. Furthermore, his motion was moot once the court dismissed his complaint. *Gissendaner*, 794 F.3d at 1330 n.3.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14351-JJ

DOUGLAS MARSHALL JACKSON,

Plaintiff - Appellant,

versus

MARK INCH,
Individual and Official Capacity as Secretary,
J. BALDRIDGE,
Individual and Official Capacity as Warden,
R SCHMITT,
Individual and Official Capacity as Assistant Warden,
JOHNNY FRAMBO,
Individual and Official Capacity as D/B/A Chaplaincy
Services Administrator for Fl Department of Corrections,

Defendants - Appellees.

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

BEFORE: GRANT, TJOFLAT, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Douglas Marshall Jackson is DENIED.

ORD-41

APPENDIX "E"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

DOUGLAS MARSHALL JACKSON,

Plaintiff,

v. Case No. 5:21-cv-255-TPB-PRL

MARK INCH, et al.,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, an inmate of the Florida penal system, is proceeding on a pro se Amended Civil Rights Complaint (Doc. 24), in which he names as Defendants Mark Inch, the Secretary of the Florida Department of Corrections; J. Baldridge, the Warden at Sumter Correctional Institution (SCI); R. Schmitt, an Assistant Warden at SCI; Johnny Frambo, Chaplaincy Services Administrator; and the Florida Department of Corrections. Plaintiff's main contention is that Defendants violated his freedom of religion under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Although Plaintiff paid the filing fee, the Court must review Plaintiff's claims, and "dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or 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. § 1915A(b) (formatting modified and paragraph enumeration

omitted). In reviewing a pro se plaintiff's pleadings, the Court must liberally construe the plaintiff's allegations. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011).

With respect to whether a complaint "fails to state a claim on which relief may be granted," § 1915(e)(2)(B)(ii) mirrors the language of Federal Rule of Civil Procedure 12(b)(6), so courts apply the same standard in both contexts. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997); *see also Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008). "To survive a motion to dismiss, a complaint must contain 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) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Labels and conclusions" or "a formulaic recitation of the elements of a cause of action" that amount to "naked assertions" will not do. *Id.* (quotations, alteration, and citation omitted). Moreover, a complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001) (quotations and citations omitted).

As previously noted, Plaintiff's main contention is that Defendants violated his rights under the First Amendment and RLUIPA by failing to recognize and accommodate his religion: "AFROCENTRIC BAYITH YAHWEH YAHDAIM AFRICAN HEBREWS ("ABYYAH"). Doc. 24 at 6. A review of Plaintiff's litigation history shows that he has filed several cases in different courts raising similar

claims, all of which have been dismissed as frivolous, malicious, and/or for failure to state a claim. *See Jackson v. Inch*, No. 3:21CV732/MCR/EMT, 2021 WL 5234402 (N.D. Fla. Nov. 9, 2021); *Jackson v. Inch*, No. 3:21CV132-MCR-HTC, 2021 WL 1172441 (N.D. Fla. Mar. 29, 2021); *Jackson v. Fla. Dep't of Corr.*, No. 3:20CV5882-LC-HTC, 2020 WL 7711821 (N.D. Fla. Dec. 29, 2020); *Jackson v. Sec'y, Fla. Dep't of Corr.*, No. 5:20-cv-237-RDB-PRL (M.D. Fla. Aug. 13, 2020); *Jackson v. Fla. Dep't of Corr. Inc.*, No. 20-CV-20777, 2020 WL 1703599 (S.D. Fla. Apr. 8, 2020). Upon review, this Court finds Plaintiff's Amended Complaint is due to be dismissed for the same reasons.

"To state a claim under the First Amendment's Free Exercise Clause [(FEC)], a plaintiff must plead facts showing a 'substantial burden' on a sincerely held religious belief." *Robbins v. Robertson*, 782 F. App'x 794, 801 (11th Cir. 2019) (citing *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1256 (11th Cir. 2012) ("First Amendment [FEC] precedent is clear: a plaintiff must allege a constitutionally impermissible burden on a sincerely held religious belief to survive a motion to dismiss."); *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) ("The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice[.]")). Similarly,

> RLUIPA prohibits the government from "impos[ing] a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the government demonstrates that burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). Therefore, to establish a prima facie case, a plaintiff

> must show: (1) that he engaged in a religious exercise; and (2) that the religious exercise was substantially burdened. *Smith v. Allen*, 502 F.3d 1255, 1276 (11th Cir. 2007), *abrogated on other grounds by Sossamon v. Texas*, 563 U.S. 277 (2011).

Smith v. Comm'r, Alabama Dep't of Corr., 844 F. App'x 286, 289 (11th Cir. 2021) (internal citations modified). "RLUIPA offers greater protection to religious exercise than the First Amendment offers." *Smith*, 502 F.3d at 1264 n.5; *see Holt v. Hobbs*, 574 U.S. 352, 356-57 (2015).

As Plaintiff did in his prior cases, he concludes that through denying his grievances, Defendants refuse to recognize and accommodate his religion.[1] One of the grievance responses attached to the Amended Complaint is signed by Defendants Schmidt[2] and Baldridge, and it states: "The religion 'Afrocentric Bayith Yahweh Yahdain African Hebrews' is not a religion recognized by the [FDOC]. Until I receive notice from Regional that this religion is recognized by the [FDOC]. Grievance DENIED." Doc. 24 at 49. Also like he did in prior cases, Plaintiff lists 70 "blanket denials." These include such things as: "BLANKET DENIED Religious Right to 'COME-OUT' of all the pagan Defendant FDOC Religious Corporate policy,

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[1] Simply denying a grievance, without more, does not render one liable for the underlying constitutional violation. *See Jones v. Eckloff*, No. 2:12-cv-375-FTM-29DNF, 2013 WL 6231181, at *4 (M.D. Fla. Dec. 2, 2013) (unpublished) ("[F]iling a grievance with a supervisory person does not automatically make the supervisor liable for the allegedly unconstitutional conduct brought to light by the grievance, even when the grievance is denied." (collecting cases)). Moreover, inmates have "no constitutionally protected liberty interest in access to the prison's grievance procedure[; therefore, Plaintiff] cannot base a § 1983 claim on the Defendant[']s response to his grievances." *Moore v. McLaughlin*, 569 F. App'x 656, 659 (11th Cir. 2014) (citing *Bingham v. Thomas*, 654 F.3d 1171, 1177 (11th Cir. 2011); *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)).

[2] Plaintiff lists this Defendant as "R. Schmitt," but his surname on the grievance response is "Schmidt." Doc. 24 at 49.

practices and procedures!"; "BLANKET DENIED Religious Right to access and view Yahweh's Prophetic Television Network (@ Galaxy 19 at 97°W, Frequency: 12177, Transponder: 27, symbol Rate: 2300, Polarity: V)!"; and "BLANKET DENIED Religious Right to ONLY be self-governed, regulated and controlled by Almighty Yahweh, the Creator, and His Book—The Book of Yahweh, The Holy Scriptures (aka 'The Holy Bible')—and NOT any other Man-Made, Traditional, Satanic, Demonic and Government demanded: (a) 'Religious Headquarters' and (b) 'Religious Letterhead' that is ANTI-Yahweh, Our Heavenly Father!!!" Doc. 24 at 42, 43 (some emphasis omitted).

Plaintiff's Amended Complaint lacks sufficient factual allegations to state a First Amendment or RLUIPA claim. Some of his assertions are nonsensical, and his allegations are largely conclusory. Notably, one of the grievances attached to Plaintiff's Amended Complaint is from March 2017, while Plaintiff was housed at DeSoto Correctional Institution. Around that same time, he filed another case in this Court claiming similar violations based on his religion. *See Jackson v. Fla. Dep't of Corr.*, No. 2:17-cv-321-FtM-99MRM, 2017 WL 3782802 (M.D. Fla.).[3] That case was dismissed without prejudice for Plaintiff's failure to comply with the Court's orders and for abuse of the judicial process, with an alternative finding that Plaintiff's claims were frivolous, malicious, and failed to state a claim. *See id.*; *see also Jackson v. Jones*, No. 6:17-cv-255-ACC-DCI, Order (Doc. 16) (M.D. Fla. Mar. 3,

[3] Plaintiff attached the same grievance to the original complaint in the 2017 case as he did to the Amended Complaint in this case. *Compare* Doc. 1 at 86, No. 2:17-cv-321-JES-MRM, *with*, Doc. 24 at 37, No. 5:21-cv-255-TPB-PRL.

2017) (dismissing without prejudice similar claims as brought in this case, including the 70 "blanket denials," and noting that "the Complaint contains a rambling and confusing litany of largely unintelligible statements that seemingly serve no legal purpose").

Not only is Plaintiff's Amended Complaint insufficient to state a claim, his repeated filing of nearly identical claims in various courts, albeit against varying defendants at different correctional institutions over the course of several years, is malicious.[4] Indeed, his abusive filing practices have caused state and federal courts to place filing restrictions on him.[5] *See Jackson v. Fla. Dep't of Corr.*, No. 3:20-cv-5882-LC-HTC, Order (Doc. 30) (N.D. Fla. Jan. 22, 2021) (recognizing that since the case was dismissed, Plaintiff, a "well experienced" litigator, had filed "five nonsensical motions/petitions" and directing the Clerk "to accept no more documents under this case number"); *Jackson v. Greene*, No. 4:08cv417/MMP/WCS (N.D. Fla. July 29, 2009) (requiring Plaintiff to include a statement on the first page of any complaint identifying himself as a three-strikes litigant); *Jackson v. Fla. Dep't of Corr.*, 790 So. 2d 398 (Fla. 2001) (barring Plaintiff from filing any actions in the Supreme Court of Florida without representation by counsel).

Plaintiff also claims that Defendants "'DISCRIMINATED' and 'CONSPIRED' against the Claimant Douglas Marshall Jackson, Almighty YAHWEH, and

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[4] Although, with the exception of Defendant Frambo, Plaintiff named the same individual Defendants (in addition to others) in case no. 5:20-cv-237-RDB-PRL as he did in the instant case.

[5] Additionally, Plaintiff is a three-strikes litigant. *See Jackson v. Inch*, No. 5:21-cv-183-WWB-PRL (M.D. Fla.).

hundreds and thousands of 'TRIBAL' African Hebrews (Black Jews) 'confined to and incarcerated within and institution' . . . by NOT ADDING (WITHIN 30-DAYS) THE ABYYAH RELIGION TO THE 'NEW' CHAPLAINCY SERVICES 'FAITH CODE LIST.'" Doc. 24 at 10. He asserts that the FDOC recognizes a "WHITE SUPREMACIST GROUP," but "will NOT 'recognize' or 'accommodate' Almighty Yahweh's AFRICAN HEBREW BLACK GROUP." *Id.* at 12. Again, Plaintiff fails to include sufficient factual allegations. His conclusory statements and use of legal phrases and buzzwords are insufficient to state a claim. And, as Plaintiff was previously advised, he cannot represent the interests of other inmates. *See Timson v. Sampson*, 518 F.3d 870, 873 (11th Cir. 2008) (recognizing that the general provision permitting parties to proceed pro se, 28 U.S.C. § 1654, provides "a personal right that does not extend to the representation of the interests of others").

Finally, Plaintiff cites to criminal statutes. However, as a private citizen, Plaintiff does not have "a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

Plaintiff was already afforded a chance to amend his claims. *See* Order (Doc. 21). The Court finds no basis to grant him another opportunity to amend. Accordingly, it is

ORDERED:

1. This case is **DISMISSED without prejudice.**

2. The **Clerk** shall enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

DONE AND ORDERED in Tampa, Florida, this 2nd day of December, 2021.

TOM BARBER
UNITED STATES DISTRICT JUDGE

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c:
Douglas Marshall Jackson, #823916

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