

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

No: 22-2603

Antoinne Lee Washington, also known as Antionne Lee Washington

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:20-cv-00225-SMR)

JUDGMENT

Before ERICKSON, STRAS, and KOBES, Circuit Judges.

The motion for leave to proceed in forma pauperis has been considered and is granted. The full \$505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

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).

September 09, 2022

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

/s/ Michael E. Gans

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ORDER

The petition for rehearing by the panel is denied.

November 02, 2022

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

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANTOINNE LEE WASHINGTON,)	Case No. 4:20-cv-00225-SMR
)	
Movant,)	
)	ORDER
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Antoinne Washington has requested that the Court reinstate his original filing of his 28 U.S.C. § 2255 motion and three additional motions related to his § 2255 filing. As has been discussed by this Court previously, an additional case was opened under number 4:20-cv-00385 for his § 2255 filing. That case was closed within minutes by the Clerk's Office office after this case was discovered. Washington's motion in the now-closed case number 4:20-cv-00385 was instead filed by the Clerk's Office in the above-captioned case at docket number 8.

It is not possible for the Court to resurrect the specific 4:20-cv-00385 case number. However, the Clerk of Court is DIRECTED to file the document and attachment filed in the above-captioned case at docket 8 in a newly established case number and to provide notice to Washington of this new case number. This will not affect Washington's § 2255 motion other than it will assigned a new case number. Washington may re-file the three motions he identifies as having been previously filed with his § 2255.¹

¹ Washington would be well advised, if he wishes to file the three motions he identifies at docket 27, to provide legal authority in support of what appear to be extraordinary motions. For instance, he refers to "A Motion Requesting Grand Jury Transcripts." Grand jury proceedings are ordinarily secret unless a particularized need is shown. *See United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 443 (1983); Fed. R. Crim. P. 6(e).

In another motion, Washington seeks a default judgment for his “civil action,” which appears to correlate to the first filings in the above-captioned case, pursuant to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(a)(2). However, that rule requires an answer by the United States “within 60 after service on the United States attorney.” *Id.* No service has been effected on the United States Attorney as Washington seeks to proceed *in forma pauperis*. [ECF No. 2]. A plaintiff granted *in forma pauperis* status may ask that the Court issue and serve their summons of process. 28 U.S.C. § 1915(d). However, the Court “shall dismiss the case at any time” if it determines the action is “frivolous or malicious” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(i)–(ii). Pro se filings are “liberally construed,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), but must still comply with the requirements of the Federal Rules of Civil Procedure and are subject to dismissal when they present no arguable basis for relief, *Williams v. Willits*, 853 F.2d 586, 588 (8th Cir. 1988).

In Washington’s complaint, he alleges his trial attorney provided ineffective assistance of counsel through “malpractice, negligence, and fraud,” depriving him of his rights under the Fifth and Sixth Amendments to the United States Constitution. [ECF No. 1 at 1, 2–4]. Washington also purports to bring an action for negligence against his former attorney, citing 42 U.S.C. § 2000dd, and breach of fiduciary duty involving “mental, emotional, and physical distress,” citing 28 U.S.C. § 2671 *et seq.*, known as the Federal Tort Claims Act (“FTCA”). *See id.* at 1, 4. Washington seeks damages totaling \$1,250,000, in addition to \$330 of compensation for every day he has spent incarcerated. *Id.* at 5.

As the Court has previously advised Washington, a federal claim for money damages that necessarily implies the invalidity of his conviction is typically not cognizable unless the conviction was “reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal

authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Washington's conviction was affirmed by the United States Court of Appeals for the Eighth Circuit, and he has not successfully challenged his conviction in post-conviction collateral proceedings under § 2255. His civil case implies the invalidity of his federal criminal conviction and necessarily requires the finding that his conviction be vacated in order to prevail on the claims stated in his complaint, his protests to the contrary notwithstanding. *See Robinson v. Jones*, 142 F.3d 905, 906–07 (6th Cir. 1998) (applying the *Heck* rule and noting that the plaintiff is "unable to establish the element necessary to sustain a *Bivens* action unless and until his conviction has been declared invalid or otherwise impugned as set forth in *Heck*); *Parris v. United States*, 45 F.3d 383, 385 (10th Cir. 1995) (applying *Heck* to federal criminal convictions challenged under 42 U.S.C. § 1983 and the FTCA, 28 U.S.C. § 2671 *et seq.*); *Stephenson v. Reno*, 28 F.3d 26, 27 (5th Cir. 1994). An ineffective assistance of counsel claim requires a showing of prejudice, meaning a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 693 (1984). Clearly, a different outcome in Washington's criminal case would imply the invalidity of his conviction.

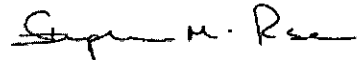
Furthermore, even in the absence of the *Heck* rule, Washington would be unable to maintain his claims. His constitutional claims under the Fifth and Sixth Amendment do not fall under the purview of a *Bivens* claim against federal officials. The United States Supreme Court has never held that a *Bivens* action extends to maintaining a claim for ineffective assistance of counsel. His claim under 42 U.S.C. § 2000dd—known as the Detainee Treatment Act—applies to military detention facilities and does not provide an independent civil cause of action for private litigants. *See Doe v. Rumsfeld*, 683 F.3d 390, 394–97 (D.C. Cir. 2012).

Lastly, Washington's claims under the Federal Tort Claims Act (FTCA) provides for the procedure and jurisdiction for tort claims made against federal officials and agencies. *See, e.g.*, 28 U.S.C. § 2674. The Complaint alleges negligence, malpractice, and fraud. [ECF No. 1 at 1]. Washington fails to plead facts to support any of the elements for these common law claims even in absence of the *Heck* rule.

Although a *pro se* plaintiff's pleadings are to be liberally construed, it is not a free pass to maintain invalid claims.² Therefore, Washington's complaint is DISMISSED. The Clerk of Court is DIRECTED to file all the documents at docket 8 pertaining to Washington's § 2255 motion on a new docket with a new case number.

IT IS SO ORDERED.

Dated this 30th day of June, 2022.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

² The dismissal of the Complaint will allow Washington to appeal its dismissal. the Court anticipates he will do so, given he already filed an interlocutory appeal, [ECF No. 16], which was dismissed by the United States Court of Appeals for the Eighth Circuit for lack of jurisdiction, [ECF No. 26]. The Circuit will now have jurisdiction to consider his appeal.

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