

United States Court of Appeals
for the Fifth Circuit

No. 22-60295

United States Court of Appeals
Fifth Circuit

FILED

November 28, 2022

Lyle W. Cayce
Clerk

CHRISTOPHER MAURICE McDOWELL,

Plaintiff—Appellant,

versus

CARLTON W. REEVES,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:21-cv-00722

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

After carefully reviewing the record and the brief filed by Christopher Maurice McDowell, we conclude that no non-frivolous issue is presented for review. *See* 5TH CIR. R. 42.2. Appeal DISMISSED.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER MAURICE MCDOWELL

PLAINTIFF

V.

CIVIL ACTION NO. 3:21-CV-722-DPJ-FKB

CARLTON W. REEVES

DEFENDANT

ORDER OF DISMISSAL

Plaintiff Christopher Maurice McDowell sued United States District Judge Carlton W. Reeves for dismissing a habeas corpus petition McDowell filed in this Court. This case (*McDowell II*) must be dismissed because Judge Reeves is entitled to absolute judicial immunity, and, even if McDowell could sue Judge Reeves, he waited too long to do so.

I. Background

On November 8, 2010, McDowell filed a habeas petition against the state seeking release from custody. *See McDowell v. Epps (McDowell I)*, No. 3:10-CV-647-CWR-LRA. The case was assigned to Judge Reeves, who dismissed it on July 21, 2011, because McDowell had not exhausted his administrative remedies. *See McDowell I*, Order [32] at 3–4. McDowell did not appeal. Nearly 10 years later, McDowell filed this case against Judge Reeves, claiming that he in fact exhausted his administrative remedies but Judge Reeves missed it. *See McDowell II* Compl. [1] at 10.

II. Standards

McDowell sought and received permission to pursue this case in forma pauperis. *See McDowell II* Order [5]. McDowell's suit is therefore subject to the Prison Litigation Reform Act (PLRA), even if he is not incarcerated. *See Patel v. United Airlines*, 620 F. App'x 352 (5th Cir. 2015) (applying PLRA screening provisions to claims of free-world plaintiff). Under the PLRA,

“the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

That statute “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaints factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). “[I]n an action proceeding under [28 U.S.C. § 1915, a federal court] may consider, *sua sponte*, affirmative defenses that are apparent from the record even where they have not been addressed or raised.” *Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir. 1990). “Significantly, the court is authorized to test the proceeding for frivolousness or maliciousness even before service of process or before the filing of the answer.” *Id.*

III. Analysis

There are two problems with McDowell’s suit: absolute judicial immunity prevents him from suing Judge Reeves, and the claim is otherwise barred by the statute of limitations.

A. Judicial Immunity

“A judge’s actions are protected by absolute judicial immunity, which is overcome in only two scenarios: (a) where the actions are ‘not taken in the judge’s judicial capacity’ or (b) where they are ‘taken in the complete absence of all jurisdiction.’” *Morrison v. Walker*, 704 F. App’x 369, 372–73 (5th Cir. 2017) (quoting *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991)) (per curiam). Unless one of those two situations exists, an unhappy litigant cannot sue the judge for

making an allegedly mistaken ruling. Whether the conduct is within the judge's judicial capacity depends on four factors:

(1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity.

Ballard v. Wall, 413 F.3d 510, 515 (5th Cir. 2005) (quoting *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993)).

McDowell alleges merely that Judge Reeves made a “mistake” by failing to realize that McDowell had exhausted administrative remedies. *McDowell II* Compl. [1] at 12. Even if McDowell is correct—which is not apparent—Judge Reeves's ruling was squarely within his judicial capacity, and there is no suggestion that he lacked all jurisdiction. Accordingly, the claim must be dismissed on this ground alone.

B. Statute of Limitations

McDowell presumably premises his claim on 42 U.S.C. § 1983. The limitations period for a § 1983 claim is determined by the forum state's statute for personal-injury actions. *See Owens v. Okure*, 488 U.S. 235, 249–50 (1989). In Mississippi, § 1983 claims are subject to a three-year statute of limitations under section 15-1-49 of the Mississippi Code. *See James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (finding in § 1983 suit that “the three[-]year residual period provided by [s]ection 15-1-49, Miss. Code Ann. applies”). Judge Reeves dismissed *McDowell I* in 2011, so the claim would be time-barred even if it could survive absolute judicial immunity. This action is due to be dismissed.

IV. Conclusion

For the reasons stated, the Court finds this action should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). A final judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 6th day of April, 2022.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER MAURICE MCDOWELL

PLAINTIFF

V.

CIVIL ACTION NO. 3:21-CV-722-DPJ-FKB

CARLTON W. REEVES

DEFENDANT

JUDGMENT

For the reasons stated, the Court finds this action should be dismissed pursuant to 28

U.S.C. § 1915(e)(2)(B).

SO ORDERED AND ADJUDGED this the 6th day of April, 2022.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CHRISTOPHER McDOWELL

PETITIONER

VERSUS

CIVIL ACTION NO. 3:10-cv-647-CWR-LRA

CHRISTOPHER EPPS, et al.

RESPONDENTS

ORDER OF DISMISSAL

This matter is before the Court, *sua sponte*, for consideration of dismissal. Petitioner Christopher McDowell, an inmate at the East Mississippi Correctional Facility, Meridian, Mississippi, filed this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254.

Petitioner states that he was released on Earned Release Supervision (“ERS”) on August 29, 2008, and remained on ERS until February 2010. Compl. [1] p. 4. On February 9, 2010, while serving the remainder of his sentence on ERS, Petitioner was issued a Rules Violation Report (“RVR”) #784491 for violating the terms of his ERS because he had been charged with domestic violence. *Id.* [1] p. 24. Subsequently, on February 24, 2010, Petitioner was found guilty of RVR #784491, violating the conditions of his ERS after receiving a new charge of domestic violence, and as a result, Petitioner’s ERS was revoked and he was referred to reclassification. *Id.* Petitioner claims that at the time his ERS was revoked his sentence was scheduled to be completed on June 6, 2010. *Id.* However, according to the petition, Petitioner was not released on June 6, 2010, and continues to be incarcerated. Petitioner, therefore, has brought the instant civil habeas action asserting that his release date was June 6, 2010, the discharge date set prior to Petitioner receiving RVR #784491, and that his continued incarceration is unlawful.

In order for this Court to determine if Petitioner exhausted the state remedies available to him, an order [17] was entered on March 8, 2011, directing him to provide said information. Petitioner filed his response [18] on March 23, 2011. In his response [18], Petitioner states that he

has not filed "anything in State Court" concerning the revocation of ERS, the alleged incorrect calculation of his release date and his unlawful incarceration.

As required by *Haines v. Kerner*, 404 U.S. 519 (1972), this Court has liberally construed Petitioner's allegations and determined that this petition for habeas relief shall be dismissed for Petitioner's failure to exhaust his state remedies.

It is a fundamental prerequisite to federal habeas relief that a Petitioner exhaust all of his claims in state courts prior to requesting federal collateral relief. *Sterling v. Scott*, 57 F.3d 451, 453 (5th Cir.1995), *cert. denied*, 116 S.Ct. 715 (1996). Title 28, Section 2254 of the United States Code provides in part as follows:

(b)(1) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

* * * * *

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

To satisfy the exhaustion requirement, Petitioner must present his claims to the state's highest court in a procedurally proper manner in order to provide the state courts with a fair opportunity to consider and pass upon the claims. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). "Applicants seeking federal habeas relief under § 2254 are required to exhaust all claims in state court prior to

requesting federal collateral relief." *Fisher v. Texas*, 169 F.3d 295, 302 (5th Cir.1999).

Petitioner has an available procedure to present his claim concerning the calculation of his sentence to the Mississippi Department of Corrections ("MDOC") by filing an administrative remedies request. *See* Miss. Code Ann. 47-5-801 to -807 (1972), as amended (granting the MDOC authority to adopt administrative review procedures); MDOC Inmate Handbook (available at [http://www.mdoc.state.ms.us/Inmate Handbook/CHAPTER VIII.pdf](http://www.mdoc.state.ms.us/Inmate%20Handbook/CHAPTER%20VIII.pdf)), ch. VIII, ¶ 3 (providing directions and information concerning MDOC's administrative review procedures). In the event Petitioner does not agree with the decision of MDOC, there is an available procedure with the state courts for an inmate to appeal a final decision rendered by the MDOC Administrative Remedy Program. *See* Miss.Code Ann. § 47-5-807 (1972), as amended; *Stokes v. State*, 984 So.2d 1089 (Miss.Ct.App. 2008)(inmate appealed MDOC's denial of administrative remedy regarding calculation of his sentence); *Siggers v. Epps*, 962 So.2d 78, 80-81 (Miss.Ct.App. 2005)(jurisdiction proper over appeal of MDOC administrative remedy affirming rule violation report).

In addition, the Court notes that the Mississippi Uniform Post-Conviction Collateral Relief Act provides an avenue for an inmate to challenge his incarceration based on a claim that "his sentence has expired" or he is "otherwise unlawfully held in custody." Miss. Code Ann. § 99-39-5(1)(h)(Supp. 2010); *see e.g., Jones v. State*, No. 2011-CP-00288-COA, 2011 WL 692908, at *2 (Miss.Ct.App. Mar. 1, 2011)(allowing an inmate's claim that his sentence had expired when his post-release supervision was revoked to be pursued in under the Mississippi Post-Conviction Collateral Relief statute). Since Petitioner has not pursued his claims, in any form, with the state courts, this habeas corpus petition will be dismissed for failure to exhaust

his available state remedies.

A Final Judgment in accordance with this Order of Dismissal will be issued this date.

SO ORDERED, this the 21st day of July, 2011.

s/Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER MAURICE McDOWELL

PLAINTIFF

VS.

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CARLTON W. REEVES

DEFENDANT

ORDER

Upon consideration of Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* [2], the Court observes that Plaintiff submitted the correct application but did not provide enough substantive information to complete the application [2]. For example, Plaintiff indicates in the motion [2] that he is "on disability benefits" and "EBT food stamps" but wrote "NONE" on the lines of the *in forma pauperis* application where he was to indicate the amount of income from disability, the amount of income from public assistance, and the amount of his food costs. *See* [2] at 1-5. Accordingly, it is hereby ORDERED:

1. That on or before November 30, 2021, Plaintiff shall file a **completed** long form application for leave to proceed *in forma pauperis* or pay the required filing fee of \$402.00.
2. My staff shall mail the attached *in forma pauperis* application to Plaintiff at his last known address.

Failure to advise this Court of a change of address or failure to comply with any order of this Court will be deemed as a purposeful delay and contumacious act by the plaintiff and may result in the denial of *in forma pauperis* status or the dismissal of this case.

SO ORDERED, this the 10th day of November, 2021.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER MAURICE McDOWELL

PLAINTIFF

VS.

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CARLTON W. REEVES

DEFENDANT

ORDER

Plaintiff has filed a motion [4] with the Court for authority to proceed *in forma pauperis*, or without prepaying fees or costs. This Court, being fully advised in the premises and having examined the applications and affidavits submitted ([2], [4]), is of the opinion that said motion is well-taken and should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Plaintiff's motion [4] to Proceed in District Court Without Prepaying Fees or Costs is **granted**, and the United States District Clerk is directed to accept the complaint filed by Plaintiff without prepayment of filing fees.

SO ORDERED, this the 6th day of December, 2021.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE