FILED: December 7, 2022

Appendix A

"Extraordinary"

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

In the Matter of	*	
Judicial Complaints	*	Nos. 04-22-90179 04-22-90189
Under 28 U.S.C. § 351	*	

ORDER

Complainant has filed at least 25 judicial complaints in this Circuit, all of which were dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii) as merits-related and lacking in evidentiary support. Complainant has filed twelve judicial complaints against the subject judge; the four most recent complaints, including the instant complaints, raise nearly identical issues. Complainant has warned the subject judge that "everytime [sic] she crys [sic] wolf and it doesn't work, works in my favor. I'm just going to file another judicial complaint."

Under Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, "[a] complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." The Judicial Council ordered complainant to show cause why his right to file further judicial complaints should not be limited pursuant to Rule 10(a). In response, complainant continues to raise the same allegations against the subject judge that have been repeatedly dismissed as merits-related and lacking in evidentiary support. Complainant persists in his belief that his underlying claims have merit and that he is justified in repeatedly filing judicial complaints.

Note: The Supreme Court Should not Allow this orders to Stand, Request Vacation

Appendix A

Complainant's numerous complaints have been repetitive and vexatious. Furthermore, complainant has clearly indicated his intention to harass a district judge through the judicial complaint procedure. Accordingly, the Judicial Council finds it necessary to restrict the complainant's ability to file further complaints. *See In re Complaint of Jud. Misconduct*, 583 F.3d 733, 734 (9th Cir. Jud. Council 2009); *In re Sassower*, 20 F.3d 42, 44 (2d Cir. Jud. Council 1994).

IT IS ORDERED that complainant shall not file any new judicial complaints in this circuit without first obtaining leave to file from the Chief Judge. Complainant must attach a copy of his proposed judicial complaint to any motion for leave to file. If a complaint is submitted without a motion for leave to file, the clerk will inform complainant that it will not be considered. If the Chief Judge denies leave to file, the clerk will notify complainant that leave to file has been denied. If the Chief Judge grants leave to file, the complaint will proceed in the normal course.

FOR THE COUNCIL:

James N. Ishida

James N. Ishida
Secretary

Date: December 7, 2022

Appendix B

"Extraordinary"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE: PRO SE LITIGANT
GREGORY K. CLINTON

Miscellaneous No: 1:22-MC-49

AMENDED ORDER

Gregory K. Clinton ("Clinton"), a *pro se* litigant, is incarcerated in a federal correctional institution in the northern district of West Virginia. Clinton has repeatedly filed frivolous actions in this court, including most recently in Civil Action No. 5:22-CV-230.

To date, Gregory K. Clinton has refused to cease his frivolous filings; accordingly, Clinton is hereby declared a harassing and vexatious litigant pursuant to 28 U.S.C. § 1915A, and therefore shall be **ENJOINED AND PROHIBITED** from filing any additional complaints or petitions in this Court unless accompanied by either:

1. full payment of the statutory and administrative filing fees; or

2. an affidavit by a licensed attorney in good standing in this Court or the jurisdiction in which he or she is admitted, attesting that he or she has reviewed such complaint or petition and that the factual allegations contained therein provide a good-faith basis for venue in this Court.

Failure to comply with this Order may subject Gregory K. Clinton to further sanctions. Furthermore, anyone with notice of this

And Should not Allow this order to stand
Either Request it be Vacated also

Appendix B

Order who acts in concert with Clinton to violate the terms of this Order may also subject themselves to sanctions.

The Clerk of Court is **DIRECTED** not to accept any pleadings from Gregory K. Clinton, absent compliance with the above restrictions, and is **AUTHORIZED** to reject and refuse to file, and/or discard any new complaint, petition, document on a closed case, or any other document submitted in violation of this Court's Order.

The Clerk of Court is further **DIRECTED** to mail of copy of this Order via certified mail, return receipt requested, to Gregory K. Clinton, #03226-087, Gilmer Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 6000, Glenville, WV 26351.

It is so **ORDERED** this 14th day of December, 2022 with approval of the Court.

Tom S Kleeh

Honorable Thomas S. Kleeh
Chief Judge
United States District Court

"Double Jeopardy Clause"
Note. The Supreme Court must understand that the closed case is 3:17-cr-5, so they will not accept any more documents about the Terminated Count I and will not correct Document 205 Filed 9/27/2018 page 9 G they will not or want to acknowledge the Erroneous Act of Fraud. The Supreme Court has to correct it. See Case Law U.S. v. Kelsor 665 F3d 684 (6TH Cir 2011) Cannot be punished multiple time for the same offense.

Appendix C 16 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

GREGORY K. CLINTON,

Petitioner,

v. **CIVIL ACTION NO.: 3:21-CV-58 (GROH)**

MR. WOLFE,

Respondent.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Currently before the Court is the Report and Recommendation ("R&R") in the above-styled action, entered by United States Magistrate Judge Robert W. Trumble on January 19, 2022. ECF No. 29. Pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure, this action was referred to Magistrate Judge Trumble for submission of an R&R. Therein, Magistrate Judge Trumble recommends that this Court deny and dismiss the Petitioner's petition [ECF No. 1] without prejudice. The Petitioner timely filed his objections to the R&R on January 27, 2022. ECF No. 31. Accordingly, this matter is now ripe for adjudication.

I. BACKGROUND

The Petitioner filed the pending Petition for Writ of Habeas Corpus on April 21, 2021. ECF No. 1. His petition concerns alleged deficiencies with his prior criminal case before this Court, 3:17-cr-5. ECF No. 1. In January of 2017, the Petitioner was charged with one count of being an armed career criminal. ECF No. 1 in 3:17-cr-5. Two months

later, the Government filed a superseding indictment, charging the Petitioner in five counts. ECF No. 40 in 3:17-cr-5. Count One charged the Petitioner with being an armed career criminal, Counts Two and Four charged the Petitioner with possession with intent to distribute cocaine base, also known as "crack," and Counts Three and Five charged the Petitioner with possession with intent to distribute cocaine hydrochloride, also known as "coke." ECF No. 40 in 3:17-cr-5. A jury found the Petitioner guilty on Counts One, Four, and Five. ECF No. 255 at 114-16 in 3:17-cr-5. The jury also found the Petitioner guilty of the lesser included offenses in Counts Two and Three. ECF No. 255 at 114-15 in 3:17-cr-5.

The Petitioner was sentenced on August 27, 2018, to 264 months incarceration for Count One, 12 months of incarceration for Counts Two and Three each and 240 months of incarceration for Counts Four and Five each, all to be served concurrently. ECF No. 256 at 37 in 3:17-cr-5. During the sentencing hearing, the Government moved for a dismissal of the Second Amended Petition for Warrant for Offender Under Supervision filed against the Petitioner in 3:08-cr-5, which was a prior criminal action of the Petitioner's. ECF No. 256 at 35 in 3:17-cr-5. The violations within the second amended petition in 3:08-cr-5 were based solely on the conduct that subsequently gave rise to the Petitioner's most recent criminal action, 3:17-cr-5, the sentencing and conviction of which underlies this civil action. ECF No. 256 at 35 in 3:17-cr-5. After an oral motion by the Government, the Court dismissed with prejudice the second amended petition for a warrant in 3:08-cr-5. ECF No. 256 at 35-36 in 3:17-cr-5.

Before filing the instant § 2241 petition, the Petitioner has twice filed § 2241 petitions with this Court. 3:20-cv-73 & 3:20-cv-179. The Petitioner filed the first petition

on April 30, 2020, alleging that he was illegally sentenced in 3:17-cr-5 because of jurisdictional defects in the original and superseding indictments, that the District Court improperly sentenced him on counts that were dismissed, that double jeopardy was violated when the Petitioner was charged for the same conduct in Count One of the original and superseding indictments, and that the arrest warrant was invalid. ECF No. 1 in 3:20-cv-73. The R&R prepared by the magistrate judge recommended that the case be dismissed because Petitioner could not satisfy the Jones test to challenge his conviction or the Wheeler test to challenge his sentence. ECF No. 65 in 3:20-cv-73. This Court adopted that R&R and dismissed the action on February 10, 2021. ECF No. 69 in 3:20-cv-73. The Petitioner appealed the dismissal of his petition to the United States Court of Appeals for the Fourth Circuit, and the Fourth Circuit dismissed the appeal by unpublished per curiam opinion on March 29, 2021. ECF No. 78 in 3:20-cv-73.

While his first petition was still pending, the Petitioner filed a second petition pursuant to § 2241 with this Court. ECF No. 1 in 3:20-cv-179. The second petition alleged the same issues with the Petitioner's conviction and sentence in 3:17-cr-5. ECF No. 1 in 3:20-cv-179. Two weeks after the Fourth Circuit dismissed his appeal of the denial of his first petition, the Petitioner filed to withdraw his second petition. ECF No. 10 in 3:20-cv-179. On April 14, 2021, this Court dismissed the Petitioner's second § 2241 petition without prejudice. ECF No. 11 in 3:20-cv-179.

One week later, on April 21, 2021, the Petitioner filed the instant petition, his third petition before this Court, pursuant to 28 U.S.C. § 2241. ECF No. 1. However, the document filed is a combination of the Court-approved forms for both § 2241 and § 2255 petitions. Further, while the Petitioner identified his sentence as forming the basis for his

petition, the arguments set forth by the Petitioner relate to his conviction. Similar to the Petitioner's prior two petitions, the Petitioner raises issues with his conviction in 3:17-cr-5. The Petitioner alleges six grounds for relief (1) this Court did not have jurisdiction over Count One in the original and superseding indictments in 3:17-cr-5 because the Commerce Clause did not apply, (2) Counts Two, Three, Four, and Five of the superseding indictment violate double jeopardy because each count charges the Petitioner with the same conduct and the government did not introduce evidence to distinguish the counts, (3) the jury was informed on lesser included offenses for Counts Two, Three, Four, and Five, which violates due process, (4) jury instructions for the charge of being a felon in possession of a firearm omitted the *mens rea* requirement required under Rehaif, (5) the Petitioner was improperly charged and prosecuted in federal court instead of state court and (6) the Petitioner was denied assistance of counsel during his direct appeal of his convictions and sentences. For relief, the Petitioner requests that the Court dismiss Count One in the original indictment and in the superseding indictment, resentence him on any other counts that require resentencing and dismiss any other duplicitous counts.

On October 18, 2021, the Petitioner filed a Motion to Docket Text. ECF No. 22. Therein, the Petitioner argues that any sentence not found by the jury violates his Sixth Amendment right to a trial by jury. Specifically, the Petitioner claims that the Court abused its discretion by dismissing Count One without the jury present.[1] The Petitioner also takes issue with Count One charging the same violation of law in both the original and

[1] The Petitioner states that Count One was dismissed with prejudice on August 27, 2018. The Petitioner's sentencing hearing in 3:17-cr-5 was held on August 27, 2018, during which the Court dismissed with prejudice the second amended petition in the Petitioner's earlier criminal case 3:08-cr-5.

superseding indictments. The Petitioner avers that this error must be corrected and that this error deprived the Court of subject matter jurisdiction over the remaining Counts in the superseding indictment.

On January 5, 2022, the Petitioner filed a Motion to Compel Summary Judgment. ECF No. 25. Therein, the Petitioner requests that the Court correct its earlier denial of summary judgment and issue a ruling on his petition. The Petitioner also restates issues regarding his conviction in 3:17-cr-5. The Petitioner also raises concern with the jury verdict forms being filed on the docket on the last day of his trial. The Petitioner asserts that because the jury verdict forms were filed on the last day, the jury could not have found him guilty of the counts presented on the verdict forms.

Magistrate Judge Trumble issued a R&R on January 10, 2022. ECF No. 26. Therein, Magistrate Judge Trumble recommends that this Court deny and dismiss the Petitioner's petition without prejudice. Magistrate Judge Trumble found that the Petitioner cannot satisfy the threshold jurisdictional test set forth in Jones.[2] Specifically, the Petitioner failed to show that the conduct he was convicted of is no longer illegal. The crimes the Petitioner was convicted of committing—distribution of cocaine base (crack), in violation of 21 U.S.C. §§ 841(a)(1); being an armed career criminal in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e); possession with intent to distribute cocaine

[2] When a petitioner is challenging the legality of his conviction, as the Petitioner appears to do, the claimant must satisfy all three of the following conditions:

> (1) at the time of the conviction, the settled law of this Circuit or of the Supreme Court established the legality of the conviction;
> (2) subsequent to the prisoner's direct appeal and first section 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and
> (3) the prisoner cannot satisfy the gate-keeping provisions of section 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000).

base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possession with intent to distribute cocaine hydrochloride, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possession of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); and possession of cocaine hydrochloride, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)—are still violations of law.

Additionally, to the extent that the Petitioner challenges his sentence, Magistrate Judge Trumble found that the Petitioner cannot satisfy the threshold test set forth in Wheeler.[3] The Petitioner did not provide the Court with any changes in substantive law pertinent to his case nor any changes that apply retroactively on collateral review. Therefore, the magistrate judge recommends that this Court deny and dismiss the Petitioner's petition without prejudice because this Court does not have jurisdiction over the Petitioner's challenge to his conviction or sentence. The Petitioner timely filed objections to the R&R on January 27, 2022. ECF No. 31.

The Petitioner filed a second Motion to Correct Sentence. ECF No. 29. Therein, the Petitioner again argues that the Court abused its discretion by dismissing Count One without the jury present. The Petitioner also alleges that his sentence was improperly

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[3] When a petitioner is challenging the legality of his sentence, § 2255 is deemed to be "inadequate or ineffective" only when all four of the following conditions are satisfied:

> (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence;
> (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review;
> (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and
> (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.

United States v. Wheeler, 886 F.3d 415, 428 (4th Cir. 2018).

enhanced. The Petitioner requests that he be resentenced and have his other counts dismissed.

Most recently, the Petitioner filed a Motion to Compel Answer to Objections. ECF No. 32. Therein, the Petitioner recounts the timeline of his case and notes that he has not received a ruling on his objections within fourteen days. The Petitioner briefly restates his objections and requests that the Court issue a ruling on his objections.

Accordingly, now pending before the Court are the Petitioner's Motion to Correct Docket Text [ECF No. 22], the Petitioner's Motion to Compel Summary Judgment [ECF No. 25], Magistrate Judge Trumble's Report and Recommendation [ECF No. 26], the Petitioner's Motion to Correct Sentence [ECF No. 29], the Petitioner's Objections to the R&R [ECF No. 31], and the Petitioner's Motion to Compel Answer to Objections [ECF No. 32].

II. LEGAL STANDARD

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Further, failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Pursuant to this Court's Local Rules, "written objections shall identify each portion of the magistrate judge's recommended disposition that is being challenged

and shall specify the basis for each objection." LR PL P 12(b). The Local Rules also prohibit objections that "exceed ten (10) typewritten pages or twenty (20) handwritten pages, including exhibits, unless accompanied by a motion for leave to exceed the page limitation." LR PL P 12(d).

"When a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, de novo review is unnecessary." Green v. Rubenstein, 644 F. Supp. 2d 723, 730 (S.D. W.Va. 2009) (citing Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)). "When only a general objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to only a clear error review." Williams v. New York State Div. of Parole, No. 9:10-CV-1533 (GTS/DEP), 2012 WL 2873569, at *2 (N.D.N.Y. July 12, 2012). "Similarly, when an objection merely reiterates the same arguments made by the objecting party in its original papers submitted to the magistrate judge, the Court subjects that portion of the report-recommendation challenged by those arguments to only a clear error review." Taylor v. Astrue, 32 F. Supp. 3d 253, 260-61 (N.D.N.Y. 2012).

Courts have also held that when a party's objection lacks adequate specificity, the party waives that objection. See Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) (finding that even though a party filed objections to the magistrate judge's R&R, they were not specific enough to preserve the claim for review). Bare statements "devoid of any reference to specific findings or recommendations . . . and unsupported by legal authority, [are] not sufficient." Id. at 766. Pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules, "referring the court to previously filed papers or

arguments does not constitute an adequate objection." Id.; see also Fed. R. Civ. P. 72(b); LR PL P 12. Finally, the Fourth Circuit has long held, "[a]bsent objection, we do not believe that any explanation need be given for adopting [an R&R]." Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983) (finding that without an objection, no explanation whatsoever is required of the district court when adopting an R&R).

III. ANALYSIS

Upon review of all the filings in this matter, the Court finds that the Petitioner has presented no new material facts or arguments in his objections to the magistrate judge's R&R. ECF No. 31. The Petitioner's first objection references 3:20-cv-78, which is a case that the Petitioner is not a party in. Moreover, the Petitioner then reasserts that Count One of the superseding indictment is in error. The Petitioner again alleges that the Court dismissed Count One of the indictment with prejudice. As it relates to the R&R, the Petitioner argues that Magistrate Judge Trumble erred by focusing on Count Two, instead of Count One, in his analysis.

The Petitioner's second objection argues that the Government violated double jeopardy by duplicating Count One of the original indictment in the superseding indictment. The Petitioner also argues that the Court lost jurisdiction when Count One was dismissed. The Petitioner submitted a copy of Count One of the superseding indictment, an excerpt from the sentencing transcript in 3:17-cr-5, a letter from the Clerk of Court, a partial docket sheet, and an excerpt of the Judgment and Commitment Order attached to his objections.

Also pending before the Court are the Petitioner's Motion to Correct Docket Text [ECF No. 22], the Petitioner's Motion to Compel Summary Judgment [ECF No. 25], the

Petitioner's Motion to Correct Sentence [ECF No. 29] and the Petitioner's Motion to Compel Answer to Objections [ECF No. 32]. The Court will address these motions separately.

A. Petitioner's Objection Asserting that Count One of the Indictment was Dismissed and the R&R Referenced Count Two in Error

In his first objection, the Petitioner asserts that Count One of his indictment was defective and the magistrate judge erred by referencing Count Two in the R&R. However, the Petitioner does not identify what finding of the R&R relies on an analysis of the substance of Count Two of the indictment. Because the Petitioner makes only a general objection, the Court will subject the R&R to only a clear error review on this issue. Williams, 2012 WL 2873569, at *2. Upon review of the R&R, the Court finds that the magistrate judge did not reference Count Two in its analysis of the present petition but in the background discussion of the Petitioner's prior petitions.

The reference to Count Two is made in Part II Factual and Procedural History, Section C.1 Northern District of West Virginia Case Number 3:20-cv-73 of the R&R. In this section, the R&R states that the second claim for relief alleged by the Petitioner in 3:20-cv-73 and 3:20-cv-179 was "that there was a defect in Count 2 of the superseding indictment issued on August 11, 2008, and that the defect was constructively and improperly amended." ECF No. 26 at 6. Upon review of the petitions filed in those cases, the Court finds that the Petitioner did indeed cite Count Two, not Count One in his filings. ECF No. 1 at 7 in 3:20-cv-73 & ECF No. 1 at 11 in 3:20-cv-179.

In 3:20-cv-73, Ground Two of the Petitioner's Petition begins "Constructive Amendment/Jurisdictional Defect *Count Two* of Superseded Indictment." ECF No. 1 at 7

(emphasis added). In 3:20-cv-179, Ground Two of the Petitioner's Petition begins just the same, "Constructive Amendment/Jurisdiction Defect *Count Two* of Superseded Indictment." ECF No. 1 at 11 (emphasis added). Thus, the magistrate judge did not inaccurately summarize the grounds alleged in the Petitioner's prior petitions. Further, both cases have been dismissed and neither have any effect on the present pending petition. Therefore, this Court finds that the magistrate judge did not commit clear error.

Additionally, the Petitioner's allegation that Count One was defective was made in his petition. ECF No. 1 at 7. "[W]hen an objection merely reiterates the same arguments made by the objecting party in its original papers submitted to the magistrate judge, the Court subjects that portion of the report-recommendation challenged by those arguments to only a clear error review." Taylor, 32 F. Supp. 3d at 260-61. This issue was reviewed by the magistrate judge [ECF No. 26 at 8], and the Petitioner offers no new material argument or facts regarding this claim in his objections. Further, the Petitioner makes no connection between this argument and the R&R's finding that he cannot satisfy either threshold jurisdictional test in Jones or Wheeler. Accordingly, the Petitioner's objection that Count Two was referenced and relied upon in the R&R in error is **OVERRULED**.

B. Petitioner's Objection Asserting that Double Jeopardy was Violated

The Petitioner's second objection asserts that the Government violated double jeopardy by duplicating Count One of the original indictment in the superseding indictment. The Petitioner cites no case law to support his objection. Additionally, the Petitioner already raised this argument in his petition. ECF No. 1 at 11. More importantly, the Petitioner makes no connection between this argument and the R&R's finding that he cannot satisfy either threshold jurisdictional test in Jones or Wheeler.

Instead, the Petitioner merely restates arguments already made in his petition and previous filings, devoid of any reference to specific findings or recommendations and unsupported by legal authority. Therefore, the Court finds that *de novo* review is not required because the Petitioner's objections offer no new legal arguments, and the Petitioner's factual presentation was properly considered by the Magistrate Judge in his R&R. See Mario, 313 F.3d at 766; Taylor, 32 F. Supp. 3d 253, 260-61. Accordingly, the Petitioner's objection that double jeopardy was violated when the superseding indictment was filed is **OVERRULED**.

C. Petitioner's Motion to Correct Docket Text

Prior to the entering of the R&R in this case, the Petitioner moved this Court to "discharge all 5 counts in case 3:17-cr-5 with prejudice and award penalties for these crimes to be paid to [him] in compensation and damages for [his] illegal incarceration." ECF No. 22 at 1. In support, the Petitioner asserts that Count One was dismissed with prejudice on August 27, 2018, citing to electronic document number 205 in 3:17-cr-5. The Petitioner requests that this clerical error be remedied and all other charges dismissed. Upon review and consideration, the Court **DENIES** the Petitioner's Motion to Correct Docket Text [ECF No. 22].

While the Court does not find any errors in electronic document number 205, the Court did find a clerical error in document 203 upon its review of the docket. In the Minute Entry [ECF No. 203], the docket reads that Count One of the original indictment was dismissed upon motion by the Government. However, during the hearing, the Government moved to dismiss the Second Amended Petition for Warrant for Offender Under Supervision that was filed against the Petitioner in 3:08-cr-5. Upon hearing the

motion, the Court dismissed with prejudice the second amended petition for warrant in the Petitioner's prior criminal case, 3:08-cr-5. w/ "EXTRAORDINARY"

The Clerk of Court is **DIRECTED** to correct the docket text of the Minute Entry [ECF No. 203] to reflect that the Government did not move to dismiss Count One of the original indictment but moved for a dismissal of Second Amended Petition for Warrant for Offender Under Supervision in 3:08-cr-5 and the Court granted the motion, dismissing the petition with prejudice. SEE "SUBTERFUGE" "FURTIVE DESIGN"

D. Petitioner's Motion to Compel Summary Judgment

On January 5, 2022, the Petitioner filed a Motion to Compel Summary Judgment. ECF No. 25. Therein, the Petitioner requests that this Court correct its denial of the Petitioner's earlier motion for summary judgment [ECF No. 5]. The Petitioner also generally requests a ruling on his petition and notes his disappointment with the pace at which his case is proceeding.

The Petitioner did not cite under which Federal Rule of Civil Procedure he brings his motion.[4] However, his *pro se* pleading is entitled to liberal construction. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). Because the Petitioner filed his motion for reconsideration more than ten days after the entry of judgment, his motion is properly considered under Rule 60(b). Miller v. Jack, 2007 WL 2255299, at *1 (N.D. W. Va. Aug. 3, 2007) (citing Moody v. Maynard, 105 F. App'x 458, 462 (4th Cir. 2004)) ("Motions for reconsideration served within 10 business days of judgment ordinarily fall under Fed. R. Civ. P. 59(e) while motions filed at a later date fall under Fed. R. Civ. P. 60(b).").

Rule 60(b) authorizes the Court to relieve a party from a final judgment for any of six enumerated reasons. Fed. R. Civ. P. 60(b). The six grounds upon which relief can be granted are:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

The Petitioner's argument most likely falls under Rule 60(b)(1) because the Petitioner requests that this Court enter a "correct" ruling, implying that a mistake had been made. However, the Petitioner does not provide any argument or detail as to the error made in the Court's prior denial decision. Instead, the Petitioner rehashes arguments made in his petition and requests that his petition be adjudicated promptly. Because the Petitioner does not identify any error made in the Court's Order Denying Motion as Premature [ECF No. 20] and because this Order rules on his pending petition, the Petitioner's Motion to Compel Summary Judgment [ECF No. 25] is **DENIED** as **MOOT**.

E. Petitioner's Motion to Correct Sentence

On January 19, 2022, after the R&R was entered in this case, the Petitioner filed a Motion to Correct Sentence. ECF No. 29. Therein, the Petitioner reiterates arguments

regarding the validity of his conviction and sentence. These arguments are more appropriately made in habeas petitions and indeed were made by the Petitioner in his habeas petition. Accordingly, pursuant to this Court's decision to deny and dismiss the Petitioner's petition without prejudice, the Petitioner's Motion to Correct Sentence [ECF No. 29] is **TERMINATED** as **MOOT**.

F. Petitioner's Motion to Compel Answers to Objections

On February 14, 2022, after filing his objections to the R&R, the Petitioner filed a Motion to Compel Answers to Objections. ECF No. 32. Therein, the Petitioner expresses concern that the Court has not ruled on his objections after fourteen days. The Petitioner also briefly restates arguments made in his petition, objections, and other pending motions. Because this Order rules on the Petitioner's objections, the Petitioner's Motion to Compel Answers to Objections [ECF No. 32] is **TERMINATED** as **MOOT**.

IV. CONCLUSION

Accordingly, finding that Magistrate Judge Trumble's R&R carefully considers the record and applies the appropriate legal analysis, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 26] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Thus, Petitioner's § 2241 Petition is **DISMISSED WITHOUT PREJUDICE**. ECF No. 1. It is **FURTHER ORDERED** that the Petitioner's Motion to Correct Docket Text [ECF No. 22] is **DENIED**, the Petitioner's Motion to Compel Summary Judgment [ECF No. 25] is **DENIED** as **MOOT**, the Petitioner's Motion to Correct Sentence [ECF No. 29] is **TERMINATED** as **MOOT** and the Petitioner's Motion to Compel Answer to Objections [ECF No. 32] is **TERMINATED** as **MOOT**.

End Appendix C

The Clerk of Court is **DIRECTED** to correct the docket text of the Minute Entry [ECF No. 203] to reflect that the Government did not move for a dismissal of Count One of the original indictment but instead moved for a dismissal of Second Amended Petition for Warrant for Offender Under Supervision in 3:08-cr-5 and the Court granted the motion, dismissing the petition with prejudice.

This case is **ORDERED STRICKEN** from the Court's active docket.

The Clerk of Court is **DIRECTED** to transmit copies of this Order to all counsel of record and the *pro se* Petitioner, by certified mail, at his last known address as reflected upon the docket sheet.

DATED: April 8, 2022

Gina M. Groh

GINA M. GROH
UNITED STATES DISTRICT JUDGE

Note: This is the Court Order to Terminate Count 1 from Docket TEXT [ECF No 203] case No 3:17-cr-5 See Fed R Crim P. Rule 48(a) See United States V. Douglas 841 644 F. Supp. By leave of Court the Origional Pleading must BE Vacated or Dismissed before A New Pleading is put before the Court AS by Judge Grohs own words Count 1 the Origional Indictment was NOT Dismissed by the USA EVER. Some body is confused BECAUSE Count 1 was Terminated ON 2/27/2018 Varified by a Deputy Clerk Officer of the Court See page 9F and RECORDED ON Page 9F(A) Just another ERRONEOUS Act by Judge Groh.

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WHEELING DIVISION

GREGORY K. CLINTON,

Plaintiff,

v. **CIVIL CASE NO. 5:22-cv-00230**

GINA M. GROH, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are three motions filed by Plaintiff, which the Court **DENIES** as follows:

1. Motion to Receive a List of All Assets. (ECF No. 35). Apparently, Plaintiff seeks to engage in discovery. However, no defendants have been served with process in this civil action, making discovery premature. Prior to service of process, the undersigned must conduct the required initial screening. *See* 28 U.S.C. § 1915A(a). Until the screening is completed and the case qualifies to proceed, service of process will not be undertaken.

2. Motion to Recuse Magistrate Judge Cheryl A. Eifert. (ECF No. 40). Plaintiff argues that the undersigned should be recused because she lied to Plaintiff in an Order, which explained that a civil rights complaint against a federal government official must be filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), rather than under 42 U.S.C. § 1983. (*Id.* at 1). Plaintiff describes this Order as giving "fraudulent legal advice in bad faith," as a violation of the "oath of office," and as "shenanigans" that must stop. (*Id.* at 2-3). He advises the undersigned that if she cannot "cut the mustard" she needs to recuse herself or "stop

Appendix D

lying." (*Id.* at 4). Despite Plaintiff's belief that he can bring a civil rights suit against a federal government official under § 1983, and that the undersigned lied to him about this fact, he is simply incorrect. As the United States Court of Appeals for the Fourth Circuit explained in *Earle v. Shreves*, 990 F.3d 774, 777-78 (4th Cir. 2021):

> A person whose constitutional rights have been violated by a state official may bring an action seeking monetary damages against the official under 42 U.S.C. § 1983. But § 1983 does not provide a cause of action against *federal* officials, and there is no analogous statute imposing damages liability on federal officials. In *Bivens*, the Supreme Court recognized for the first time an implied cause of action for damages against federal officers alleged to have violated a citizen's rights under the Constitution and permitted the plaintiff to seek compensatory damages from federal agents alleged to have violated the Fourth Amendment.

(internal citations and markings omitted). Consequently, a claim seeking damages against a federal official for a violation of civil rights is called a *Bivens* action. Given that the undersigned did not lie or deceive Plaintiff; he states no other grounds for recusal; and the undersigned knows of no other grounds for recusal, the motion mut be denied.

3. Motion to have Gina M. Groh Disbarred. (ECF No. 41). Plaintiff complains about the style of the case, but provides no explanation for his motion to have Judge Groh disbarred. In any event, disbarment is not relief that this Court is authorized to grant, as law licenses are governed by individual states, not by the federal courts.

The Clerk is directed to provide Plaintiff with a copy of this Order.

ENTERED: November 22, 2022

Cheryl A. Eifert
United States Magistrate Judge

Appendix E 8 pgs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WHEELING DIVISION

GREGORY K. CLINTON,

Plaintiff,

v. **CIVIL CASE NO. 5:22-cv-00230**

GINA M. GROH, et al.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATIONS

Pending before the Court are Plaintiff's *pro se* civil rights complaint, (ECF Nos. 1, 9), and Motion to Remove 17 Co-defendants, (ECF No. 23). This matter is assigned to the Honorable Thomas E. Johnston, United States District Judge, and is referred to the undersigned United States Magistrate Judge for submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons that follow, the undersigned respectfully **PROPOSES** that the presiding District Judge accept and adopt the findings herein and **RECOMMENDS** that the Motion to Remove 17 Co-defendants, (ECF No. 23), be **GRANTED**; the complaint, (ECF Nos. 1, 9), be **DISMISSED**, with prejudice; and this case be **CLOSED** and **REMOVED** from the docket of the Court.

I. Relevant History

Plaintiff Gregory K. Clinton ("Clinton") filed an incomplete civil rights complaint on September 19, 2022 in which he failed to list the names of the defendants he wished to sue. (ECF No. 1). The complaint alleged: (1) conspiracy against rights 18

U.S.C. § 241; (2) four counts of grand larceny; (3) fraudulent West Virginia State Police Arrest Report; and (4) illegal forfeiture. (ECF No. 1 at 4-6). All of these claims apparently stemmed from his arrest in 2016 by West Virginia law enforcement officers and the subsequent seizure and forfeiture of his personal property. (*Id.* at 4-10). For relief, he requested five million dollars in compensatory damages; five millions dollars in exemplary damages; five million dollars in nominal damages; fifty million dollars in punitive damages; 100 million dollars for deliberate indifference; and that arrest warrants be issued for eighteen people, whom he wanted charged with grand larceny. (*Id.* at 12-14).

On September 20, 2022, the Clerk of Court sent Clinton a Notice of Deficient Pleading along with paperwork and instructions for Clinton to review and complete. (ECF No. 2). On the Court's docket, the Clerk included as named defendants all eighteen individuals for whom Clinton sought warrants.

On October 3, 2022, Clinton filed a second civil rights complaint, using the form supplied by the Clerk of Court. (ECF No. 9). In this pleading, he named only Chief Judge Gina M. Groh as a defendant. (*Id.* at 1-2). He complained that his Fifth Amendment right to be free from double jeopardy was violated when Judge Groh allowed a superseding indictment to be filed in a federal criminal action against Clinton, having Case No. 3:17-cr-05. (*Id.* at 7). He also alleged that Judge Groh violated his fifth amendment and due process rights in relation to a forfeiture of his property by the West Virginia State Police. (*Id.* at 9). Finally, he contended that Judge Groh had a "meeting of the minds" with United States Magistrate Judge Robert W. Trumble regarding certain actions taken in Clinton's federal criminal case, No. 3:17-cr-5, which Clinton described as a "conspiracy." (*Id.* at 10). Clinton asked for money damages and

injunctive relief in the form of charges dismissed in his criminal case, resentencing, and immediate release from custody. (*Id.* at 11).

II. Standard of Review

Title 28 U.S.C. § 1915A requires the court to conduct an initial screening of "a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity" as soon as practicable after docketing. *See* 28 U.S.C. § 1915A(a). The court must dismiss any portion of the complaint that is frivolous or malicious, 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). A "frivolous" case has been defined as one which is based upon an indisputably meritless legal theory, *Anders v. California*, 386 U.S. 738, 744 (1967), or lacks "an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Denton v. Hernandez*, 504 U.S. 25 (1992). A complaint fails to state a compensable claim, and therefore should be dismissed, when viewing the well-pleaded factual allegations in the complaint as true and in the light most favorable to the plaintiff, the complaint does not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007).

The Supreme Court of the United States further clarified the "plausibility" standard in *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009), stating that the court is required to accept as true the factual allegations asserted in the complaint, but is not required to accept the legitimacy of legal conclusions that are "couched as ... factual allegation[s]." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[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.'" *Id.* Although *pro se* complaints, such as the one filed in this case, must be liberally construed to allow the development of potentially meritorious claims, the Court may not rewrite the pleading to include claims that were never presented, *Parker v. Champion*, 148 F.3d 1219, 1222 (10th Cir. 1998), develop the plaintiff's legal theories for him, *Small v. Endicott,* 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court. *Beaudett v. City of Hampton,* 775 F.2d 1274, 1278 (4th Cir. 1985).

III. Discussion

A. Motion to Remove 17 Co-Defendants

Clinton asks to remove all of the individuals identified as defendants by the Clerk of Court, with the exception of Chief Judge Gina M. Groh. (ECF No. 23). He makes clear that he did not intend for these seventeen people to be included in his lawsuit. (*Id.*). Therefore, the undersigned **FINDS** that the Motion should be granted.

B. Judge Groh

In support of his complaint against Judge Groh, Clinton attaches various excerpts from documents filed in cases involving Clinton over which Judge Groh presided, (ECF Nos. 9-2 through 9-7); a few documents from his state court forfeiture action, (ECF Nos. 9-8, 9-9); and an Administrative Detention Order from the Federal Bureau of Prisons reflecting that Clinton is pending an SIS investigation. (ECF No. 9-10). It is plain from the body of the complaint, as well as these attachments, that Clinton's claims against Judge Groh arise from her role as a judicial officer. The law is well settled that judicial officers have absolute immunity from lawsuits related to the exercise of their jurisdiction as judges. *Pierson v. Ray,* 386 U.S. 547, 554 (1967);

Stephens v. Herring, 827 F. Supp. 359, 365 (E.D. Va. 1993). This is true even if the judicial act allegedly was done maliciously, corruptly, or in bad faith, *King v. Myers,* 973 F.2d 354, 356 (4th Cir. 1992) (citations omitted), and no matter "how erroneous the act may have been, and however injurious in its consequences [the judicial act] may have proved to the plaintiff." *Cleavinger v. Saxner,* 474 U.S. 193, 199–200 (1985) (quoting *Bradley v. Fisher,* 80 U.S. 335, 347 (1871)). "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Cleavinger,* 474 U.S. at 499-500 (quoting *Pierson,* 386 U.S. at 553–554). "Judicial immunity is an absolute immunity: it does not merely protect a defendant from assessment of damages, but also protects a judge from damages suits entirely." *Lemon v. Hong*, No. CV ELH-16-979, 2016 WL 3087451, at *4 (D. Md. June 2, 2016) (citing *Mireles v. Waco,* 502 U.S. 9, 11 (1991)).

There are only two conditions in which judicial immunity does not apply to bar a civil rights claim: (1) if the judge acted in the "clear absence of all jurisdiction" or (2) the judge's action was not a "judicial act." *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978); *King*, 973 F.2d at 356-57. Under the first condition, "[a] distinction is drawn between acts that are performed in 'excess of jurisdiction' and those performed in the 'clear absence of all jurisdiction over the subject-matter,' with the former type of act accorded immunity." *Id.* Therefore, the question is "whether at the time [the judge] took the challenged action he had jurisdiction over the subject matter before him, and, in answering that question, the scope of the judge's jurisdiction must be construed broadly." *Id.* at 357 (internal quotations and markings omitted).

As to the second condition, in determining whether the act at issue was a "judicial act," the court examines "whether the function is one normally performed by

a judge, and whether the parties dealt with the judge in his or her judicial capacity." *Id.* Notably, "the absolute immunity extended to a judge performing a judicial action is not in any way diminished even if his or her exercise of authority is flawed by the commission of grave procedural errors." *Id.* Such "errors do not render the act any less judicial, nor permit a determination that the court acted in the absence of all jurisdiction." *Id.*

Clinton complains about a wrongful forfeiture of his property related to a criminal proceeding, about rulings Judge Groh made in his criminal and civil actions, and about documents filed in his cases. Clearly, all of the alleged wrongdoing by Judge Groh fell squarely within her role as a presiding judge. Clinton attempts to escape the litigation bar he faces by claiming that Judge Groh played some role in having him placed in administrative detention at Federal Correctional Institution Gilmer. (ECF No. 9-10 at 1). However, Clinton alleges no facts to support his accusation, and rank speculation is insufficient to state a plausible claim. *Twombly*, 550 U.S. at 555.

Finally, in regard to Clinton's request for resentencing or release from custody, such relief is not available in a civil rights action. *Preiser v. Rodriguez,* 411 U.S. 475, 479 (1973). As Clinton is well aware from his numerous other filings[1], he must seek that type of relief in a habeas action. Therefore, the undersigned **FINDS** that Clinton's complaint is barred by the doctrine of judicial immunity and otherwise fails to state a

[1] *See Clinton v. Riley,* No. 3:20-cv-00151 (N.D.W. Va. Sept. 30, 2020), at ECF No. 19, for a review of Clinton's criminal action, appeal, motion for acquittal, motion for return of property, his two § 2255 motions, and § 2241 motion, all of which touch on similar subject matter as is asserted in this complaint. In addition to the criminal and civil actions discussed in *Riley,* Clinton filed an additional § 2241 petition attacking the same criminal convictions as addressed herein. *Clinton v. Wolfe,* No. 3:21-cv-00058 (N.D.W. Va. Apr. 21, 2021). Clinton also has filed multiple civil rights complaints in this district, some of which address the same or related matters. *See, e.g., Clinton v. Grant,* 3:20-cv-178 (N.D.W. Va. Sept. 18, 2020); *Clinton v. Chumley,* No. 5:22-cv-241 (N.D.W. Va. Oct. 3, 2022).

plausible claim against Judge Groh.

IV. Proposal and Recommendation

For the stated reasons, the undersigned respectfully **PROPOSES** that the presiding District Judge accept and adopt the findings herein and **RECOMMENDS** that the presiding District Judge **GRANT** the Motion to Remove 17 Co-defendants, (ECF No. 23); **DISMISS** the complaint in its entirety, with prejudice, (ECF Nos. 1, 9); and **CLOSE** and **REMOVE** this matter from the docket of the Court.

Plaintiff is notified that this "Proposed Findings and Recommendations" is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure. Plaintiff shall have fourteen days (filing of objections) and three days (if received by mail) from the date of filing this "Proposed Findings and Recommendations" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendations" to which objection is made and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Judge Johnston and Magistrate Judge Eifert.

End Appendix E

The Clerk is directed to provide a copy of this "Proposed Findings and Recommendations" to the Plaintiff by certified mail, return receipt requested, and to terminate the Magistrate Judge association with this case.

FILED: November 23, 2022

Cheryl A. Eifert
United States Magistrate Judge

See Case Law: In Re Shared Memory Graphics LLC, 659 F3d 1336 (Fed Cir 2011)
Remedy of "Mandamus is available in extraordinary situation to correct a clear abuse of discretion or usurpation of Judicial power. See page 5 of 8 and 6 of 8, and Article III Section 1 of the US constitution page 9I and 9H

Appendix F

FILED

JAN 18 2017

U.S. DISTRICT COURT-WVND
MARTINSBURG, WV 25401

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY KEITH CLINTON, Defendant.	Criminal No. 3:17CR5 Violations: 18 U.S.C. § 922(g)(1) 18 U.S.C. § 924(a)(2) 18 U.S.C. § 924(e)

INDICTMENT

The Grand Jury charges that:

COUNT ONE

(Armed Career Criminal Act)

On or about July 3, 2016, in Jefferson County, in the Northern District of West Virginia, defendant **GREGORY KEITH CLINTON**, having been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, that is possession with intent to distribute cocaine, in the Circuit Court of Washington County, Maryland, in case number 11256, on August 6, 1990; and aiding and abetting the distribution of cocaine base, in the United States District Court for the Northern District of West Virginia, in case number 3:97CR31, on November 12, 1998; and distribution of cocaine base, in the United States District Court for the Northern District of West Virginia, case number 3:08CR5, on August 11, 2008, did knowingly possess in and affecting commerce a firearm, that is a

Case Law: United States v. Crow Dog 532 Fed 1182 See Next Page The End

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Appendix F

Ruger, Model P90, .45 caliber pistol, serial number 660-99800; in violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

Note: The Supreme Court must be aware that Chief Judge Gina M. Groh has alter the court record to protect the fact that a timely Motion for dismissal was not filed by the Government See Document 38 Appendix C pages 11 of 16, 12 of 16 and 13 of 16, Mag. Judge Cheryl Eifert is not the only one to expose the courts Judge Grohs erroneous actions and lapse of memeory See page 9F. This is a violation of Federal Rule Criminal Procedure 48(a) as Judge Groh admitts in Doc. 38 pg 13 of 16 the Government "NEVER" filed a Motion to Dismiss this Count I.E. Original Indictment, but it was Terminated on 8/27/18. Somebody is Not Telling the "Truth". See Case Law United States v. Hastings 447 F Supp 534 (E.D. Ark 1977) and United State v. Stevens 2008 US Dist. LEXIS 39046 (D.D.C.) A Mag Judge Eifert explains in Doc. 43 Appendix E page 6 of 8 her exercise of authority is Flawed by the commission of GRAVE procedural errors, I tried in 25 Judicial Complaits. All the Documended Evedence is before you NOW. I do not whnt to belive Chief Judge Gina M Groh can violate All Statues and Her Oath of Office and the US Constitution, Now it's up to you, Respectfully Gregory K. Clinton, you have to be accountable for your Actions, Superseding Indictment is Void. It cannot be used as a dismissal. The End.

Appendix 6

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4621

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY KEITH CLINTON,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, Chief District Judge. (3:17-cr-00005-GMG-RWT-1)

Submitted: April 29, 2019 Decided: May 14, 2019

Before GREGORY, Chief Judge, and MOTZ, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Gregory K. Clinton, Appellant Pro Se. David J. Perri, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

Note: See how much the lie has grown!

PER CURIAM:

A jury convicted Gregory K. Clinton of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e) (2012); possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (2012); possession with intent to distribute cocaine hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C); possession of cocaine base, in violation of 21 U.S.C. § 844 (2012); and possession of cocaine hydrochloride, in violation of 21 U.S.C. § 844. Electing to proceed pro se on appeal, Clinton challenges his convictions on the grounds that the district court erroneously denied his motion to suppress evidence and his motion for a judgment of acquittal or new trial. Clinton also raises claims of judicial misconduct, lack of district court jurisdiction, perjury, ineffective assistance of counsel, and improper forfeiture. Finding no reversible error, we affirm.

We turn first to the district court's denial of Clinton's motion to suppress. Clinton argues, as he did before the district court, that the Government obtained the challenged evidence as the result of an initially lawful traffic stop that authorities prolonged in violation of the Fourth Amendment. *See generally Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015). The district court held that the attending officers did not prolong the traffic stop longer than necessary to achieve the mission of the stop and, alternatively, held that any such prolonging was supported by reasonable suspicion of criminal activity. We review the court's legal conclusions de novo and its factual findings for clear error, viewing the evidence in the light most favorable to the Government. *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017). After review of the record, we discern no clear

How could three judges overlook Document 40 FILE 3/21/2017 CASE No. 3:17-cr-00004-GMG-RWT PageID#336 The Superseding Clearly does not have 21 USC§844 and 21 USC§844 (2017) on it

error in the district court's factual finding that the officers did not prolong the stop. *See id.* at 382–83. Accordingly, we affirm the district court's denial of Clinton's motion to suppress.

Clinton also claims that the district court erred in denying his motion for judgment of acquittal or new trial, which concerned evidence that the Government allegedly withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). The district court denied Clinton's motion on the ground that any evidence so withheld was not material. *See generally United States v. Bagley*, 473 U.S. 667, 682 (1985) (establishing materiality standard). We affirm for the reasons stated by the district court.

We have reviewed Clinton's claims concerning judicial misconduct, absence of jurisdiction, perjury, and forfeiture and find them entirely without merit. Finally, we decline to consider Clinton's claims of ineffective assistance of counsel because the record does not conclusively establish his counsel's ineffectiveness. *See United States v. Baptiste*, 596 F.3d 214, 216 n.1 (4th Cir. 2010). Clinton should assert this claim, if at all, in a 28 U.S.C. § 2255 (2012) motion. *Id.*

Accordingly, we affirm the judgment of the district court. We deny Clinton's motion for arrest warrants. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED