

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

No: 23-1230

Larry David Davis

Plaintiff - Appellant

v.

Cargile, Prosecutor, Pulaski County Prosecutor's Office; Reese Lancaster, Prosecutor, Pulaski
County Prosecutor's Office; Barry A. Sims, Judge, Circuit Court; Terri Hollingsworth, Clerk,
Pulaski County Circuit Court; Beth C. Kremers, Court Reporter

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:21-cv-00426-KGB)

JUDGMENT

Before SHEPHERD, GRASZ, 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).

May 10, 2023

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

APPENDIX A

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**LARRY DAVID DAVIS
ADC #123330**

PLAINTIFF

v.

Case No. 4:21-cv-00426-KGB

**CARGILE, Prosecutor,
Pulaski County Prosecutor's Office, et al.**

DEFENDANTS

ORDER

Plaintiff Larry David Davis, who is currently an inmate at the Delta Regional Unit of the Arkansas Division of Correction, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 (Dkt. No. 2). His motion for leave to proceed *in forma pauperis* is currently before the Court (Dkt. No. 1).

I. *In Forma Pauperis* Application

Under the Prison Litigation Reform Act ("PLRA"), a prisoner who is permitted to file a civil action *in forma pauperis* still must pay the full statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The only question is whether a prisoner will pay the entire filing fee at the initiation of the proceeding or in installments over a period of time. *Ashley v. Dilworth*, 147 F.3d 715, 716 (8th Cir. 1998). Even if a prisoner is without assets and unable to pay an initial filing fee, she will be allowed to proceed with her § 1983 claims, and the filing fee will be collected by the Court in installments from the prisoner's inmate trust account. 28 U.S.C. § 1915(b)(4).

If the prisoner's case is subsequently dismissed for any reason, including a determination that it is frivolous, malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief, the full amount of the \$350.00 filing fee will be collected, and no portion of this filing fee will be refunded to the prisoner. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee."); *see also Jackson*

APPENDIX B

v. N.P. Dodge Realty Co., 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (“The Prison Litigation Reform Act (PLRA) makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal. Thus, when an application to proceed in forma pauperis (IFP) is filed in such a case, ‘the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.’”) (citations omitted) (quoting *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997)).

Mr. Davis has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a) (Dkt. No. 1). Accordingly, Mr. Davis’s motion to proceed *in forma pauperis* is granted. Based on the information contained in Mr. Davis’s account information sheet, the Court will assess an initial partial filing fee of \$47.00. After paying the initial filing fee, Mr. Davis will be obligated to make monthly payments in the amount of 20% of the preceding month’s income credited to Mr. Davis’s prison trust account each time the amount in the account exceeds \$10.00 until the \$350.00 filing fee is fully paid. 28 U.S.C. § 1915(b)(2).

II. Background

Mr. Davis sued Prosecuting Attorneys Cargile and Reese Lancaster, Judge Barry A. Sims, Pulaski County Circuit Court Clerk Terri Hollingsworth, and Court Reporter Beth C. Kremers in their personal and official capacities (Dkt. No. 2, at 1-2). Mr. Davis alleges irregularities in the transcript of his January 22, 2019, state court omnibus hearing and his February 13, 2019, state criminal trial (*Id.*, at 3). Mr. Davis asserts that Prosecuting Attorney Reese Lancaster told the jury at Mr. Davis’s state criminal trial that Mr. Davis was, at that time, in prison (*Id.*). Mr. Lancaster also allegedly told the jury about “priors that [Mr. Davis] had caught passing through Arkansas 11 to 23 years before [his] trial . . .” (*Id.*). Mr. Davis maintains that the fingerprint expert explained that the results of her analysis revealed that the “thumbprint belong to 13 different individuals”

(*Id.*). Mr. Davis also claims that at his January 22, 2019, omnibus hearing, Judge Sims told him that “Arkansas [does not] do preliminary hearings” and “[does not] do indictments by a grand jury”

(*Id.*). According to Mr. Davis, all of the statements above “have been erased out of [his] trial transcript and erased out of [his] omnibus hearing [transcript]” (Dkt. No. 2, at 3). Mr. Davis attached the allegedly altered transcripts to his complaint (*Id.*, at 6-257). Mr. Davis believes his due process and equal protection rights were violated because he was not “heard on appeal on the facts as it occurred at [his] trial, and proceedings, and the trial court [has] a duty to preserve the record for appellate review” (*Id.* at 4). However, Mr. Davis never identifies the individual or individuals he believes deleted portions of his transcript. Mr. Davis seeks declaratory relief, injunctive relief, and compensatory and punitive damages (*Id.*). He also seeks to bring an end to the “unconstitutional act of altering and changing trial transcripts, and proceedings wording to the state[’s] favor from what actually occurred at trial . . .” (*Id.*).

III. Screening

The Prison Litigation Reform Act (“PLRA”) requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b). The *in forma pauperis* statute also imposes these standards for dismissal. 28 U.S.C. § 1915(e)(2)(B).

An action is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be

granted if it does not plead “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).

In reviewing the sufficiency of a *pro se* complaint under the Court’s screening function, the Court must give the complaint the benefit of a liberal construction. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The Court also must weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). Although *pro se* complaints are to be liberally construed, the complaint must allege specific facts sufficient to state a claim. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

A. Legal Standard

Mr. Davis brought suit under 42 U.S.C. § 1983. To state a claim for relief under § 1983, the complaint must allege that a person acting under the color of state law deprived the plaintiff of a constitutional or federally-protected statutory right. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). “Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Parrish v. Ball*, 594 F.3d 993, 1001 (8th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)). Factual allegations must be sufficient to “raise a right to relief above the speculative level” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). For the reasons explained below, Mr. Davis has failed to state a claim on which relief may be granted.

B. Discussion

1. Defendants Cargile, Hollingsworth, And Kremers

Mr. Davis sued defendants Cargile, Hollingsworth, and Kremers, but he made no specific allegations against any of these individuals in his complaint. Further, nothing in Mr. Davis's pleadings indicates these defendants acted in any way that violated Mr. Davis's federally-protected rights. Bare allegations void of factual enhancement are insufficient to state a claim for relief under 42 U.S.C. § 1983. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Accordingly, taking the allegations in the complaint in the light most favorable to Mr. Davis, his complaint fails to state a claim on which relief may be granted against defendants Cargile, Hollingsworth, and Kremers.

2. Judge Barry A. Sims

Mr. Davis asserts that at his January 22, 2019, omnibus hearing, Judge Sims told him that "Arkansas [does not] do preliminary hearings" and "[does not] do indictments by a grand jury" (Dkt. No. 2, at 3). Mr. Davis's official-capacity damages claims against Judge Sims fail because they are the equivalent of damages claims against the State of Arkansas. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). That type of relief is not available on an official-capacity claim. Section 1983 provides for a cause of action against a person acting under color of state law who deprives another of a federally-protected right. 42 U.S.C. § 1983. However, "neither a State nor its officials acting in their official capacity are 'persons' under § 1983" against whom monetary damages may be recovered. *See Will*, 491 U.S. at 71. Accordingly, Mr. Davis's official-capacity damages claims against Judge Sims must be dismissed.

Absolute immunity bars Mr. Davis's personal-capacity claims against Judge Sims. "Judges performing judicial functions enjoy absolute immunity from § 1983 liability." *Robinson v. Freeze*, 15 F.3d 107, 108 (8th Cir. 1994). "[J]udicial immunity is an immunity from suit, not

just from ultimate assessment of damages.” *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Judicial immunity is overcome only when a judge acts outside of his judicial capacity or when his actions are taken in complete absence of all jurisdiction. *Id.*, 502 U.S. at 11-12. “A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’” *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (internal citation omitted). Mr. Davis has not alleged that Judge Sims acted outside of his judicial capacity or in complete absence of jurisdiction. Accordingly, absolute immunity applies.

While Mr. Davis seeks injunctive relief, § 1983 provides that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” Here, Mr. Davis did not claim that a declaratory decree was violated or that declaratory relief was unavailable. Accordingly, he failed to state a claim for injunctive relief against Judge Simms. *Justice Network, Inc. v. Craighead Cnty.*, 931 F.3d 753, 763 (8th Cir. 2019).

Immunity does not bar Mr. Davis’s claim against Judge Sims for declaratory relief, but declaratory relief nonetheless is not available to Mr. Davis. *Id.*, at 763-64. The Court of Appeals for the Eighth Circuit has explained that “declaratory relief is limited to *prospective* declaratory relief.” *Id.* (emphasis in original). In this case, Mr. Davis seeks to right a past wrong. He claims he was not heard on appeal on the facts as they occurred; his appeal concluded in 2020.¹ Under these circumstances, Mr. Davis failed to state a claim against Judge Sims for declaratory relief.

¹ See Arkansas Judiciary Website, Docket Search, <http://caseinfo.arcourts.gov>; *Davis v. Arkansas*, 60CR-18-2636.

3. Prosecuting Attorney Reese Lancaster

Mr. Davis's official capacity damages claims against Mr. Lancaster are barred for the same reason Mr. Davis's official capacity claims against Judge Sims fail. Mr. Lancaster is an official of the State of Arkansas and not a "person" who may be sued for damages for the purposes of § 1983. Further, "[p]rosecutors are absolutely immune from suits for damages arising out of their official duties in initiating and pursuing criminal prosecutions." *Williams v. Hartje*, 827 F.2d 1203, 1208 (8th Cir. 1987) (citing *Imbler v. Pachtman*, 424 U.S. 409 (1976)). The only wrongful conduct Mr. Davis alleged on the part of Mr. Lancaster were statements Mr. Lancaster made at Mr. Davis's criminal trial. These actions were taken in Mr. Lancaster's prosecution of Mr. Davis's criminal case. As such, absolute immunity applies.

As to Mr. Davis's request for injunctive relief, under *Ex Parte Young*, an individual may sue a state official in his or her official capacity for prospective injunctive relief to remedy ongoing violations of federal law. *See Ex Parte Young*, 209 U.S. 123, 149-50 (1908). The issue here, then, is whether Mr. Davis alleged ongoing violations. Mr. Davis pleaded only that Mr. Lancaster told the jury, at Mr. Davis's state criminal trial, that Mr. Davis was, at that time, in prison and told the jury about "priors that [Mr. Davis] had caught passing through Arkansas 11 to 23 years before [his] trial . . ." (Dkt. No. 2, at 3). These allegations reflect past wrongs. As such, injunctive and declaratory relief are inappropriate based on Mr. Davis's allegations, and Mr. Davis failed to state a claim for this type of relief.

Further, injunctive relief is inappropriate where an adequate remedy exists at law. *Pulliam v. Allen*, 466 U.S. 522, 542 & n.22 (1984). Here, there were other remedies available to Mr. Davis—for example, writ of mandamus and petition for review at the Arkansas Supreme Court.

4. *Heck v. Humphrey*

Mr. Davis points out that the fingerprint expert said a thumbprint could have belonged to 13 people, and Mr. Davis alleges the record was altered by an unknown person or persons to favor the State. To the extent Mr. Davis challenges his conviction, those claims are barred by the holding of the United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477 (1994). As the Supreme Court instructed:

[W]he a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 487. This approach prevents “a collateral attack on the conviction through the vehicle of a civil suit.” *Id.* at 485 (internal citations omitted).

Nothing in Mr. Davis's pleadings indicates that his conviction has been invalidated. If Mr. Davis prevailed on his claims that the transcript in the lower court criminal proceedings was altered, a judgment in his favor in this case would call into question the outcome of his trial and appeal. Under these circumstances, Mr. Davis's challenges are barred by the Supreme Court's ruling in *Heck*, and his claims must be dismissed. See *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (applying *Heck* to request for declaratory relief); *Sheldon v. Hundley*, 83 F.3d 231, 233 (8th Cir. 1996) (courts look to essence of plaintiff's claims rather than form of relief sought).

IV. Conclusion

The Court rules as follows:

1. Mr. Davis's motion for leave to proceed *in forma pauperis* is granted (Dkt. No. 1).

2. As Mr. Davis's present custodian, the Warden of the Delta Regional Unit of the Arkansas Division of Correction, or his designee, or any future custodian, is directed to collect from Mr. Davis's institutional account the \$350.00 filing fee by collecting the initial partial filing fee of \$47.00 and thereafter monthly payments equal to 20% of the preceding month's income credited to Mr. Davis's account each time the amount in the account exceeds \$10.00. The Warden of the Delta Regional Unit of the Arkansas Division of Correction or his designee, or any future custodian, is further directed to forward the payments to the Clerk of the Court in accordance with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk. The payments also must be clearly identified by the name and number assigned to this action.


3. The Clerk of the Court is directed to send a copy of this Order to the Warden of the Delta Regional Unit of the Arkansas Division of Correction, 880 East Gaines Street, Dermott, Arkansas 71638; the ADC Trust Fund Centralized Banking Office, P.O. Box 8908, Pine Bluff, Arkansas 71611; and the ADC Compliance Office, P.O. Box 20550, Pine Bluff, Arkansas 71612.

4. Mr. Davis's claims are dismissed without prejudice.

5. Mr. Davis's complaint is dismissed without prejudice (Dkt. No. 2). The relief sought is denied.

6. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order and the accompanying Judgment would not be taken in good faith.

So ordered this 9th of January, 2023.



Kristine G. Baker
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**LARRY DAVID DAVIS
ADC #123330**

PLAINTIFF

v.

Case No. 4:21-cv-00426-KGB

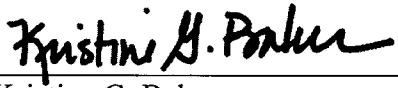
**CARGILE, Prosecutor,
Pulaski County Prosecutor's Office, *et al.***

DEFENDANTS

JUDGMENT

Pursuant to the Order filed on this date, it is considered, ordered, and adjudged that plaintiff Larry David Davis's complaint is dismissed without prejudice. The relief sought is denied. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an *in forma pauperis* appeal taken from the Order and Judgment dismissing this action is considered frivolous and not in good faith.

So adjudged this 9th of January, 2023.



Kristine G. Baker
United States District Judge

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

No: 23-1230

Larry David Davis

Appellant

v.

Cargile, Prosecutor, Pulaski County Prosecutor's Office, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:21-cv-00426-KGB)

ORDER

The petition for rehearing by the panel is denied.

June 27, 2023

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

/s/ Michael E. Gans