APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-2089

ADRIAN M. JACKSON,

Plaintiff-Appellant,

v.

CLINTON CANADY III, Judge, et al.,

Defendants-Appellees.

Before: SUHRHEINRICH, GIBBONS, and MATHIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 22-2089

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ADRIAN M. JACKSON, Plaintiff-Appellant, v. CLINTON CANADY III, Judge, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: SUHRHEINRICH, GIBBONS, and MATHIS, Circuit Judges.

Adrian M. Jackson, proceeding pro se, appeals the district court's grant of summary judgment in his civil rights action brought pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because we can discern no error in the district court's judgment, we affirm.

After violently attacking his wife in a church, Jackson pleaded no contest to aggravated domestic violence. Following his plea, Jackson claims that his mother overheard presiding judge Clinton Canady III, assistant prosecutor Joe Finnerty, and public defender Edward Hess discussing the case in the courtroom hallway. Jackson further alleges that his mother heard the three men agreeing to put him behind bars for as long as possible. Judge Canady ultimately sentenced Jackson to the statutory maximum, one year of imprisonment. Judge Canady also imposed a term of one year of probation with a requirement that Jackson participate in a domestic violence program and wear a curfew tether for 120 days. Jackson moved for leave to appeal. Jackson also refused to sign the order of probation, prompting Judge Canady to hold a hearing and revoke the

probation order. During that hearing, Judge Canady determined that Jackson would not receive "earned early release" credit from the Ingham County Jail.

Following these events, the Michigan Court of Appeals remanded the case to the trial court for the court to amend the judgment to remove all references to the term of probation, to the domestic violence program, and to the curfew tether. The Court of Appeals determined that the trial court could not impose these additional punishments because it had already sentenced Jackson to the statutory maximum term of imprisonment. The Court of Appeals also vacated the trial court's order revoking probation because the probation term itself was invalid. Jackson was released from jail after 300 days of imprisonment, and he was never placed on probation, required to wear a tether, or required to participate in a domestic violence program.

Jackson then filed this § 1983 action against Judge Canady, Finnerty, and Hess. He claimed that the defendants conspired to imprison him for as long as possible, in violation of his Fifth and Fourteenth Amendment rights, because they believed him to be "a horrible and violent person due to what he did to his wife (at the time of the offense, Plaintiff's wife worked for the Michigan State Police)." He claimed that this conspiracy resulted in the unlawful probation term, which in turn led to the loss of 52 days of earned early release credit from jail at the time Judge Canady revoked his probation term. Finally, Jackson claimed that Judge Canady violated his oath of office by imposing a term of probation in excess of the statutory maximum.

The defendants moved to dismiss or, in the alternative, for summary judgment. The district court granted summary judgment in favor of the defendants. The court determined that absolute judicial and prosecutorial immunity shielded Judge Canady and Finnerty from liability. It also dismissed the conspiracy claim against Hess because Jackson failed to establish a genuine dispute of material fact as to whether he suffered an injury from an unlawful action. Given the resolution of the summary-judgment motion, the district court denied Jackson's motion for discovery as moot.

On appeal, Jackson argues that judicial and prosecutorial immunity should not apply because the discussion in the courthouse hallway was not a judicial act and because Judge Canady lacked jurisdiction. He also asserts that he created a genuine dispute of material fact as to whether he suffered an injury from unlawful action because the probation revocation improperly removed his earned early release credit and resulted in him being held 52 days longer than he otherwise

would have been. He also claims that the district court abused its discretion by denying his motion for discovery.

We review the district court's grant of summary judgment de novo. *Maben v. Thelen*, 887 F.3d 252, 258 (6th Cir. 2018). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Generally, judges are immune from suit for monetary damages. *Norfleet v. Renner*, 924 F.3d 317, 319 (6th Cir. 2019) (citing *Mireles v. Waco*, 502 U.S. 9, 9 (1991)). This absolute judicial immunity can be overcome in two instances: when an action is not taken in the judge's judicial capacity, and when the judge acts in the complete absence of all jurisdiction. *Mireles*, 502 U.S. at 11-12.

Jackson first argues that Judge Canady's actions were non-judicial, noting that the judge was overheard speaking to Finnerty and Hess in the hallway outside of the courtroom during a lunch break. Jackson also contends that Judge Canady prejudged the case and imposed an illegal sentence. "[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). Immunity still applies even if the judge acts in error, with malice, or in excess of his authority. *Id.* at 356. Here, issuing a sentence, revoking a probation order, and consulting with attorneys about a case and sentence—even if done in error or with malice—are judicial acts, and absolute judicial immunity applies.

Jackson next claims that, at least for the probation hearing and revocation order, Judge Canady lacked jurisdiction because Jackson had already filed a notice of appeal of his sentence. But because Jackson pleaded no contest, he had to seek leave to appeal. *See* Mich. Ct. R. 7.203(A)(1)(b), (B). In this situation, Michigan Court Rule 7.208(A) removes the trial court's ability to set aside or amend the judgment only after "leave to appeal is granted." Rule 7.208 also provides the trial court with numerous exceptions, thus not stripping the trial court of *all* jurisdiction even if leave to appeal had already been granted. Accordingly, absolute judicial immunity applies.

Turning to Finnerty, prosecutors are also entitled to absolute immunity when engaging in activities "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). Initiating a prosecution and presenting the State's case qualify as such activities because the prosecutor is acting as an advocate, but actions taken in an administrative or investigative role do not. *See Watkins v. Healy*, 986 F.3d 648, 661 (6th Cir. 2021) (citing *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). Finnerty's actions and statements during Jackson's sentencing and probation hearing were intimately associated with the judicial phase of the criminal process, as was advocating for a maximum sentence during a meeting about the case with the judge and public defender. And as discussed above, the judicial proceedings were not taken in the absence of all jurisdiction. Finnerty is entitled to absolute prosecutorial immunity.

Jackson next contests the rejection of his civil-conspiracy claim against Hess. Jackson claims that he suffered an injury in the form of the 52 days of earned early release credit that were lost when Judge Canady revoked probation. A civil conspiracy is "an agreement between two or more persons to injure another by unlawful action." *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) (quoting *Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007)). To establish a conspiracy under § 1983, a plaintiff must show that there was a single plan, that the alleged coconspirators shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant. *Webb v. United States*, 789 F.3d 647, 670 (6th Cir. 2015).

Jackson served less than his 365-day sentence, and he does not dispute that he received the good-time credit available by statute. Instead, he references a policy of the Ingham County Jail that authorizes earned early release credit for inmates who participate in jail programs or are hired as jail workers "unless the Judge specifies otherwise in the commitment." But according to this policy, Judge Canady possessed complete discretion to deny earned early release credit, and the decision to do so after Jackson raised his objection to the probation order was lawful and did not violate Jackson's constitutional rights, even if that order was later vacated for other reasons. *See Conn. Bd. of Pardons v. Dumschat*, 452 U.S 458, 465 (1981) (recognizing that a constitutional entitlement is not created by a discretionary state privilege). Jackson therefore did not establish

an injury to state a conspiracy claim, and the district court correctly granted summary judgment in favor of Hess.

Lastly, Jackson challenges the district court's denial of his motion for discovery as moot. He does not show how this requested discovery would alter our conclusions. Moreover, Jackson acknowledges in his reply brief that the transcripts he sought were already in his mother's possession. The district court did not abuse its discretion.

We therefore **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADRIAN M. JACKSON, Plaintiff,	)	
	)	No. 1:22-cv-85
-v-	)	
	)	Honorable Paul L. Maloney
CLINTON CANADY, *et al.*, Defendants.	)	

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff Jackson filed this civil rights lawsuit against a state court judge, an assistant prosecuting attorney and an assistant public defender, all of whom were involved in a criminal proceeding against Plaintiff. The Court granted Defendants' motions for summary judgment and dismissed the lawsuit. Plaintiff filed a motion to alter or amend the judgment under Rule 59(e). (ECF No. 30.) The Court will deny the motion.

For a court to grant relief under Rule 59(e), a party must rely on (1) a clear error of law, (2) newly discovered evidence, (3) an intervening change in controlling law, or (4) a need to prevent manifest injustice. *Gen. Motors, LLC v. FCA U.S. LLC*, 44 F.4th 548, 563 (6th Cir. 2022) (citation omitted). "The purpose of Rule 59(e) is to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings." *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008). Rule 59(e) does not provide an opportunity for litigants to reargue or relitigate issues when the parties simply disagree with the court's previous ruling. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998); *Jones v. Natural Essentials, Inc.*, 740

F. App'x 489, 495 (6th Cir. 2018) ("As the district court noted, Rule 59(e) does not exist to provide an unhappy litigant an opportunity to relitigate issues the court has already considered and rejected."). Neither does Rule 59(e) authorize a party "to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11 C. Wright & A. Miller, Federal Practice and Procedure § 2810.1, pp. 127-28 (2d ed. 1995)).

Jackson alleges four errors of law in the Court's prior opinion and order.

1. Denial of Discovery. Plaintiff contends the Court committed an error of law when it denied his request for discovery. The Court denied the request because Plaintiff did not meet the requirements set forth in Rule 56(d). (ECF No. 28 Opinion and Order at 3-4 PageID.448-49.) Defendants filed their motions under Rule 12(b) and alternatively under Rule 56. When a party does not have evidence necessary to oppose a motion for summary judgment, Rule 56(d) permits the party to establish that lack of evidence by an affidavit or declaration. Plaintiff did not file any affidavit or declaration attesting to a lack of evidence and, therefore, a need for discovery. Plaintiff has not established an error of law.

Plaintiff's explanation for the need for discovery also establishes why he cannot prevail on this issue through a Rule 59(e) motion. Plaintiff insists that discovery would show that he did not plead guilty to a probation violation. Plaintiff insists that Defendants have made false statements about his guilty plea and the docket sheet in the criminal proceedings is incorrect. As evidence for his argument, Plaintiff quotes the transcript from the hearing. Because Plaintiff has access to the transcript, he does not need discovery. And, because he has access to the transcript, he could have presented the transcript to the Court as part of his response

to the motions for summary judgment. He did not do so and Rule 59(e) does not permit this Court to now consider the transcript. Evidence is newly discovery only when the evidence was previously unavailable. *Id.* (citation omitted). Newly submitted evidence is not necessarily newly discovered evidence. *Whitehead v. Bowen*, 301 F. App'x 484, 489 (6th Cir. 2008).

2. Judicial Immunity. Plaintiff argues that this Court erred when it concluded that Defendant Canady was entitled to judicial immunity. Concerning the meeting outside of court, Plaintiff merely reasserts the arguments he raised in his initial motion. Plaintiff has not established an error that needs to be corrected. Plaintiff also argues that the Court erred by finding that Judge Canaday still had subject-matter jurisdiction even though Plaintiff had filed a notice of appeal. Plaintiff has not established an error of law. In situations where a party has an appeal of right, jurisdiction transfers from the trial court to the court of appeals upon the filing of a notice of appeal. Plaintiff pled no contest and, as a result, did not have an appeal of right. *See* Mich. R. Ct. 7.203(A)(1)(b). Plaintiff's authority involves situations where the defendant had an appeal of right and jurisdiction had shifted to the court of appeals. Plaintiff had to seek leave to appeal (permission) and the Michigan Court of Appeals had not granted Plaintiff permission to appeal when Judge Canady held the October 13 hearing.

3. Prosecutorial Immunity. Plaintiff argues this Court erred when it concluded that Defendant Finnerty was entitled to prosecutorial immunity. Plaintiff has not established an error of law. Plaintiff again raises the same arguments he made in his response brief and includes additional authority. The Court described the distinction between duties as

prosecutor and duties as investigator or administrator and concluded that Defendant Finnerty acted as a prosecutor. (ECF No. 28 at 8-9 PageID.453-54.) Plaintiff's authority in this motion merely identifies situations where a prosecutor was acting as an administrator or investigator. Those factual situations are not present in this case.

4. Defendant Hess - Lack of Injury. For context, the Court summarizes the relevant injury arising from the October order. Plaintiff reasons that the sentence imposed for the alleged probation violation, which precluded earned early release (EER), was unlawful. And, because the unlawful order denied EER, Plaintiff reasons that he spent an addition 52 days in custody. The Court concluded that Defendant Canady's denial of EER was lawful and, therefore, Plaintiff's injury did not arise from some unlawful act. (ECF No. 28 at 11 PageID.456.)

Plaintiff has not demonstrated an error of law. The maximum sentence of Plaintiff's crime of conviction was one year. Without dispute, Plaintiff served less than one year in jail. The Michigan Court of Appeals found that the initial sentence exceeded the statutory maximum because it added a term of probation (and other conditions) after the one-year jail term. (ECF No. 17-12 PageID.340.) Because the term of probation was not permitted, the Michigan Court of Appeals also vacated the October order revoking probation. (*Id.*) The portion of the October order and sentence that denied earned early release affected the jail term, the portion of the sentence that was permitted by law. The denial of earned early release was within Defendant Canady's discretion and did not affect the term of probation. While the denial of earned early release was contained in an order that the Michigan Court of Appeals vacated, that particular portion of the October order was not itself unlawful.

For these reasons, the Court **DENIES** Plaintiff's motion to alter or amend a judgment. (ECF No. 30.) **IT IS SO ORDERED.**

Date: November 7, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADRIAN M. JACKSON, Plaintiff,	)	No. 1:22-cv-85
-v-	)	Honorable Paul L. Maloney
CLINTON CANADY, *et al.*, Defendants.	)	

JUDGMENT

The Court has resolved all pending motions and has dismissed all of Plaintiff's claims.

As required by Rule 58 of the Federal Rules of Civil Procedure, **JUDGMENT ENTERS.**

THIS ACTION IS TERMINATED.

IT IS SO ORDERED.

Date: June 30, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADRIAN M. JACKSON, Plaintiff,	)	
	)	No. 1:22-cv-85
-v-	)	
	)	Honorable Paul L. Maloney
CLINTON CANADY, *et al.*, Defendants.	)	

OPINION AND ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Adrian Jackson, proceeding without the benefit of counsel, filed this lawsuit alleging violations of his civil rights. Jackson sues (1) Clinton Canady, a circuit court judge for the 30th Circuit Court in Ingham County, (2) Joe Finnerty, an assistant prosecutor in Ingham County, and (3) Edward Hess, an attorney with the Ingham County Public Defender's Office. Plaintiff contends that all three individuals entered into a conspiracy to impose an unlawful sentence and that Judge Canady then did impose an unlawful sentence. Defendants Canady and Finnerty filed a motion to dismiss or, alternatively, for summary judgment. (ECF No. 14.) Defendant Hess also filed a motion to dismiss or, alternatively, for summary judgment. (ECF No. 16.) Plaintiff has since filed two motions for discovery.[1] (ECF Nos. 23 and 27.) The Court will grant the motions for summary judgment and will dismiss Plaintiff's motion for discovery as moot.

[1] In the first motion, Plaintiff relies on a "good cause" standard used for discovery in habeas situations. In their response, Defendant argued the standard and authority did not apply. (ECF No. 24.) In the second motion, Plaintiff relies on Rule 26. The motions are, otherwise, the same.

I.

A.

Defendants' briefs include summaries of the law for Rule 12(b)(6) motions to dismiss and for Rule 56 motions for summary judgment. To their motions, Defendants attach eleven documents.[2] In the statement of facts, Defendants cite their exhibits and include facts found in those exhibits and not found in Plaintiff's amended complaint (ECF No. 12). In the portion of their briefs setting forth the reasons the Court should dismiss the claims against them, Defendants do not clearly distinguish between their Rule 12(b)(6) motion and their alternative Rule 56 motion.[3] Because Defendants do not make the effort to carefully distinguish between a proper Rule 12(b)(6) motion, which considers only the pleadings, and a Rule 56 motion, which permits consideration of evidence outside the pleading, the Court declines to grant relief under Rule 12(b)(6). *See* Fed. R. Civ. P. 12(d).

B.

A trial court should grant a motion for summary judgment only in the absence of a genuine dispute of any material fact and when the moving party establishes it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that no genuine issues of material fact exist. *Celotex Crop. v. Catrett*, 477 U.S. 317,

[2] Defendants attached the same eleven documents to their separate motions. For convenience, the Court cites only the documents attached to the motion filed by Defendants Canady and Finnerty.

[3] In both motions, Defendants argue that the allegations supporting the conspiracy claim are vague and conclusory. The Court disagrees. Reading the complaint liberally (Plaintiff proceeds without the benefit of counsel), Plaintiff has pled sufficient facts which, assumed to be true, provide a basis for at least the inference of each element of a civil conspiracy claim and which put Defendants on notice of the basis for that claim.

324 (1986). To meet this burden, the moving party must identify those portions of the pleadings, depositions, answers to interrogatories, admissions, any affidavits, and other evidence in the record, which demonstrate the lack of genuine issue of material fact. Fed. R. Civ. P. 56(c)(1); *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 627-28 (6th Cir. 2018). The moving party may also meet its burden by showing the absence of evidence to support an essential element of the nonmoving party's claim. *Holis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 543 (6th Cir. 2014).

When faced with a motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Pittman*, 901 F.3d at 628 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)). The court must view the facts and draw all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Maben v. Thelen*, 887 F.3d 252, 263 (6th Cir. 2018) (citing *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In resolving a motion for summary judgment, the court does not weigh the evidence and determine the truth of the matter; the court determines only if there exists a genuine issue for trial. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (quoting *Anderson*, 477 U.S. at 249). The question is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252.

Parties may file a motion for summary judgment "at any time until 30 days after the close of all discovery." Fed. R. Civ. P. 56(b). When the nonmoving party does not have access to facts necessary to oppose the motion, that party may file an affidavit or declaration

establishing his or her inability to present those facts. *Id.* 56(d). Here, Plaintiff has asked for leave to conduct discovery. Plaintiff has not filed any affidavit or declaration. Plaintiff asks the Court to have Defendants produce the audio and video for his two sentencings. Plaintiff has not indicated what that evidence would show, how that evidence would help him support a claim or oppose the motions for summary judgment, or why he cannot access that evidence at the present. *See Doe v. City of Memphis*, 928 F.3d 481, 490 (6th Cir. 2019). Nor has Plaintiff explained how the audio and video might create a genuine issue of material fact relevant to the pending motions. As presented, Plaintiff's motions for discovery do not provide a basis for this Court to defer or delay ruling on the pending motions for summary judgment. *See id.* 56(d)(1)-(3).

II.

Following an incident with his wife in August 2019, the Ingham County Prosecutor initiated a criminal action against Plaintiff and charged him with four counts: (1 and 2) two counts of larceny from a person, (3) domestic violence, and (4) aggravated domestic violence. (ECF No. 15-3 Criminal Information PageID.249-50.) In August 2020, Plaintiff agreed to plead no contest to the aggravated domestic violence charge. (ECF No. 15-4 PageID.252.) On September 16, 2020, Judge Canady sentenced Plaintiff to 365 days with credit for 150 days served. (ECF No. 15-5 PageID.254.) In addition, Judge Canady imposed a twelve-month term of probation, ordered Plaintiff to attend a domestic violence program and also ordered Plaintiff to be on a curfew tether for 120 days upon release from jail. (*Id.*)

On September 28, 2020, Plaintiff signed a notice of appeal, which the prosecutor received on October 5, 2020. (ECF No. 15-6 PageID.257.) Plaintiff filed the docket sheet

for his criminal action as an attachment to his amended complaint. (ECF No. 12-3 Docket Sheet.) The docket sheet shows Plaintiff's notice of appeal as entered on October 5, 2020. (PageID.200.)

On September 29, 2020, Judge Canady signed an Order of Probation. (ECF No. 15-8.) Then, on October 6, 2020, Judge Canady issued an order scheduling a hearing on October 13 for a violation of probation. (Docket Sheet PageID.200.) On October 13, Plaintiff waived his hearing and pled guilty to the probation violation. (*Id.*) Judge Canady then entered an order revoking probation and sentencing Plaintiff to jail for 365 days with credit for 177 days. (ECF No. 15-9 PageID.266.) The order also stated "NO EER." (*Id.*)

On May 7, 2021, the Michigan Court of Appeals vacated the initial sentence and remanded the matter to the circuit court. (ECF No. 15-12 PageID.275.) The court of appeals directed the circuit court to enter an amended judgment of sentence "omitting all references to probation, the domestic violence program, and the curfew tether." (*Id.*) The maximum sentence for Plaintiff's crime of conviction was one year and the court of appeals explained that the sentencing court could not also impose a period of probation after Plaintiff had served the maximum sentence. (*Id.*)

Jail records establish that county authorities booked Plaintiff into the facility on April 20, 2020, and released Plaintiff on February 17, 2021. (ECF No. 15-10 PageID.268.)

Plaintiff pleads two causes of action in his amended complaint. (ECF No. 12.) First, he alleges a conspiracy between Canady, Finnerty and Hess to deprive him of his civil rights by confining him as long as possible and at all costs. Second, Plaintiff alleges Defendant Canady imposed illegal sentences. The first sentence exceeded the maximum sentence

permitted by statute when it added a term of probation following the 365 days of imprisonment. The second sentence eliminated earned early release and caused Plaintiff to remain in jail for an additional 52 days.

III.

A. Defendant Canady - Judicial Immunity

Judge Canady argues he is entitled to absolute judicial immunity. Plaintiff contends Judge Canady acted without jurisdiction or authority when he met with the co-defendants over the lunch break and also when he imposed an illegal sentence.

In our court system, judges enjoy absolute immunity from civil actions for money damages. *Bright v. Gallia Cty., Ohio*, 753 F.3d 639, 948 (6th Cir. 2014). "In general, litigants can protect themselves from judicial errors through the appellate process or other judicial proceedings without resort to suits for personal liability." *Id.* at 649. Our Supreme Court has identified only two circumstances where a plaintiff can overcome judicial immunity: (1) when the injury arises from nonjudicial actions, meaning acts not take the judge's judicial capacity, and (2) when the judge acts in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). Courts must focus on the nature and function of the act, not the act itself; "we look to the particular act's relation to a general function normally performed by a judge[.]" *Id.* at 13.

The Court concludes Judge Canady enjoys absolute judicial immunity from Plaintiff's claims. First, Plaintiff has not established that Judge Canady acted without jurisdiction when he and the other defendants met and allegedly conspired over the lunch break. Meeting with counsel to discuss a pending case or proceeding falls within the scope of a judge's ordinary

duties, even if it occurs off the record and outside of the courtroom. *See Forrester v. White*, 484 U.S. 219, 227 (1988) ("Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character."). Plaintiff's authority does not require a different conclusion. Plaintiff has neither alleged nor established facts to show that Judge Canady acted as the prosecutor. *See Lopez v. Vanderwater*, 620 F.2d 1229, 1235-37 (7th Cir. 1980). Plaintiff's other authority, *Rankin v. Howard*, 633 F2d 844 (9th Cir. 1980), has since been overruled by *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986) (en banc). In *Ashelman*, the Ninth Circuit explained how it erred in *Rankin*: "our prior decisions construed the immunity doctrines too narrowly by focusing on underlying actions instead of looking to the ultimate acts." *Id.* at 1078. The court then set forth the new holding:

> We therefore hold that a conspiracy between judge and prosecutor to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to judges and prosecutors. As long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies.

Id.

Plaintiff's second reason for avoiding judicial immunity, an illegal sentence, also fails. Judge Canady performed a quintessential judicial function when he sentenced Plaintiff, albeit a sentence not permitted by statute. *See, e.g., Wilson v. Lostracco*, 221 F.3d 1337 (6th Cir. June 26. 2000) (unpublished order) ("Lostracco was performing judicial functions when he sentenced Wilson and ordered him into MDOC custody, and thus is immune from a suit seeking monetary damages.").

Finally, the Plaintiff's October 5 notice of appeal did not deprive Judge Canady of jurisdiction. Following a no-contest plea, a notice of appeal does not automatically transfer jurisdiction from the trial court to the court of appeals. Mich. R. Ct. 7.203(A)(1)(b); *In re Holms*, No. 315150, 2014 WL 2972362, at *1 n.1 (Mich. Ct. App. July 1, 2014). The Michigan Court of Appeals had not granted Plaintiff's leave to appeal when Judge Canady issued the October 13 sentence.

B. Defendant Finnerty - Prosecutorial Immunity

Assistant Prosecutor Finnerty argues that he also entitled to immunity from the claims in this lawsuit. Plaintiff argues Finnerty does not enjoy immunity for his role in the conspiracy to violate Plaintiff's rights. Plaintiff also argues that because the conspiracy involved individuals who do not have immunity (Defendant Hess), Finnerty lost any immunity he might otherwise enjoy.

Prosecutors enjoy immunity from § 1983 lawsuits for money damages when they act within the scope of their duties in initiating and pursuing a criminal prosecution. *See Imbler v. Pachtman*, 424 U.S. 409, 427 (1976); *Watkins v. Healy*, 986 F.3d 648, 661 (6th Cir. 2021). Using the functional approach, prosecutors have absolute immunity for acts taken in connection with their duties as a prosecutor, but not for investigative or administrative acts. *Spurlock v. Thompson*, 330 F.3d 791, 797-98 (6th Cir. 2003). The location of the act, whether inside or outside of the courtroom, does not make a difference; immunity arises from the role played by the prosecutor, not the location of the act. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 271 (1993) ("As we have noted, the *Imbler* approach focuses on the conduct for which immunity is claimed, not the harm that the conduct may have

caused or the question of whether it was lawful. The location of the injury may be relevant to the question whether a complaint has adequately alleged a cause of action for damages .... It is irrelevant, however, to the question of whether the conduct of a prosecutor is protected by absolute immunity.").

Finnerty enjoys absolute immunity from Plaintiff's claim. Plaintiff's claim against Finnerty arises from his role as the prosecutor in the criminal action. For acts taken in that role, Finnerty enjoys absolute immunity. Describing the claim in terms of a conspiracy does not alter this conclusion. *See Pinaud v. Cty. of Suffolk*, 52 F.3d 1139, 1148-49 (2d Cir. 1995) ("As this Court and others have repeatedly held, since absolute immunity covers virtually all acts, regardless of motivation, associated with the prosecutor's function as an advocate, when the underlying activity at issue is covered by absolute immunity, the plaintiff derives no benefit from alleging a conspiracy.") (cleaned up; collecting cases).

Plaintiff's allegation that Finnerty conspired with a person not entitled to immunity does not undermine Canady's or Finnerty's immunity. *See Pena v. Mattox*, 84 F.3d 894, 897 (7th Cir. 1996) ("It would not do to strip a judge or prosecutor of his immunity merely because he conspired with nonimmune persons.")

C. Defendant Hess - Lack of Injury

Defendant Hess argues, among other things, that Plaintiff has not established any injury that he suffered as a result of the alleged conspiracy. Hess reasons that Plaintiff's maximum sentence was 365 days and he served only 300 after receiving statutory good-time credit. Plaintiff contends he served an extra 52 days because the October 2020 sentence denied him earned early release.

For a claim under 28 U.S.C. § 1983, a plaintiff must show how the defendant or defendants deprived the plaintiff of a right secured by our Constitution or the laws of the United States and that the defendant or defendants acted under color of state law. *Burley v. Gagacki*, 729 F.3d 610, 619 (6th Cir. 2013). Ordinarily, the law does not consider public defenders a state actor against whom § 1983 claims can be brought. *See Polk Cty. v. Dodson*, 454 U.S. 312, 318 1981); *White v. Robertson-Deming*, 9 F. App'x 418, 419-20 (6th Cir. 2001) ("It is firmly established that a public defender or court-appointed defense counsel, while acting in that capacity, is not a state actor for the purposes of § 1983.") (citing *Polk County*). However, private individuals act under color of state law when they conspire with state officials to deprive another person of his or her federal rights. *Tower v. Glover*, 467 U.S. 914, 920 (1984). Applying this principle, our Supreme Court has recognized an exception the general rule that public defenders are not state actors. "[S]tate public defenders are not immune from liability under § 1983 for intentional misconduct, 'under color of' state law, by virtue of alleged conspiratorial action with state officials that deprived their clients of federal rights." *Id.* at 923.

A civil conspiracy claim under § 1983 requires the claimant to prove an agreement between two or more people to injure another by unlawful action. *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014). Without an injury by unlawful action, the plaintiff cannot establish a claim for civil conspiracy. *Farhat v. Jopke*, 370 F.3d 580, 599 (6th Cir. 2004).

Plaintiff has not established a genuine issue of material fact on the injury element; he did not suffer any injury based on an unlawful act. Judge Canady initially imposed a sentence not permitted by law. Without dispute, Plaintiff did not serve a serve more than one year,

the maximum sentence for his crime of conviction. Before Plaintiff served any portion of the initial sentence not permitted by law, two events happened. First, Judge Canady issued a second sentence. Second, the Michigan Court of Appeals invalidated the initial sentence and remanded the matter. Plaintiff cannot establish that he suffered any injury from the initial sentence.

Plaintiff's alleged injury arises from a lawful act. Plaintiff alleges an injury from the sentence imposed by Judge Canady in October 2020. He contends that he spent an additional 52 days in jail because Judge Canady denied earned early release. While Plaintiff does not explain the EER policy or identify its source, Defendants have. Ingham County authorizes an earned early release program or policy at the County Jail. (ECF No. 15-11 PageID.270.) Inmates at the jail are automatically eligible for earned early release credit "*unless the Judge specifies otherwise in the commitment.*" (*Id.*) (italics in original). Plaintiff has no right to earned early release. A judge, in his or her discretion, may deny eligibility for earned early release. Judge Canady's decision to deny Plaintiff earned early release was a lawful order.

Plaintiff has not established that Judge Canady accomplished his lawful order by unlawful means. At the October 13 hearing for a probation violation, Plaintiff pled guilty. Judge Canady then sentenced Plaintiff to a term of imprisonment authorized by statute for the underlying offense of conviction, the aggravated battery charge. The relevant statute expressly authorizes this procedure. Mich. Comp. Laws § 771.4(5) ("If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty *as the court might have done if the probation order had never been made.*") (emphasis

added); *see People v. Kaczmarek*, 628 N.W.2d 484, 487 (Mich. 2001) ("Instead, revocation of probation simply clears the way for resentencing on the original offense."). The procedure did not expose Plaintiff to a new conviction or to new punishment. *People v. Johnson*, 477 N.W.2d 426, 428 (Mich. Ct. App. 1991) ("If a judge finds a probationer violated his probation by committing an offense, the probationer is neither burdened with a new conviction nor exposed to punishment other than that to which he was already exposed as a result of the previous conviction for which he is on probation.").

Plaintiff also argues that Defendant Hess refused to file a notice of appeal on his behalf. Plaintiff cannot establish any injury from Defendant Hess's alleged refusal. Plaintiff filed his own notice, which was timely and ultimately successful. And, Plaintiff sought and was appointed appellate counsel. (ECF No. 15-7 PageID.259.) Because Plaintiff entered a no-contest plea, he did not have a right to appeal. Plaintiff has not established that Defendant Hess had any obligation to file a notice of appeal.

IV.

The Court concludes Defendants are entitled to summary judgment. Defendant Canady acted within the scope of his judicial authority and enjoys absolute judicial immunity. Defendant Finnerty acted within the scope of his prosecutorial authority and also enjoys absolute immunity. Plaintiff has not established a genuine issue of material fact sufficient for a jury to find an injury from the alleged civil conspiracy and, therefore, the claim against Defendant Hess must fail. Because the Court will grant the motions for summary judgment, Plaintiff's motion for discovery is moot.

ORDER

For the reasons provided in the accompanying Opinion, the Court **GRANTS** Defendants' motions for summary judgment (ECF Nos. 14 and 16) and **DISMISSES AS MOOT** Plaintiff's motions for discovery (ECF Nos. 23 and 27).

The Court considers whether to issue a Certificate of Appealability. The Court has separately reviewed the record for this purpose. The Court concludes that reasonable jurists would not disagree with the manner in which the Court has resolved Plaintiff's claims. Accordingly, the Court **DENIES** a certificate of appealability. **IT IS SO ORDERED.**

Date: June 30, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

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