NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 24, 2023*
Decided July 25, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2969

CHET SMITH,
Plaintiff-Appellant,

v.

COOK COUNTY, ILLINOIS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22-cv-1678

Martha M. Pacold,
Judge.

ORDER

In 2018, a grand jury in the Circuit Court of Cook County, Illinois, indicted Chet Smith for attempted first-degree homicide, and he was remanded to the Cook County Jail for pretrial detention. Smith later sued, alleging that the prosecution violated his

*The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

due-process rights under the Fourteenth Amendment. The district court screened the complaint under 28 U.S.C. § 1915A and, after allowing Smith to amend his complaint, dismissed the case. Because the amended complaint failed to state a claim, we affirm.

We accept the facts Smith alleges as true, drawing reasonable inferences in his favor. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). In 2018, after a shooting, Smith was arrested and indicted for attempted first-degree murder. Only the grand jury foreman, not the other grand jurors, signed the indictment.

In March 2022, Smith—apparently still in jail awaiting trial—sued the County. He alleged that there was no probable cause to arrest him in 2018; that the State's Attorney had conspired with a Chicago police detective to maliciously prosecute him and was withholding exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); and that his indictment was invalid because the entire grand jury had not signed it. The district court screened the complaint, 28 U.S.C. § 1915A, and dismissed it after concluding that the only possible theory of relief against the County was a claim under *Monell v. Department of Social Services.*, 436 U.S. 658 (1978), for failure to train prosecutors to obtain valid indictments. But, the court concluded, the absence of all grand jurors' signatures does not violate the federal Constitution. The court allowed Smith to amend, but because the amended complaint "differed little" from the first, the court dismissed it with prejudice.

On appeal, Smith focuses on the supposed invalidity of his indictment and does not develop arguments about the dismissal of his other claims. He relies on *Gaither v. United States*, 413 F.2d 1061 (D.C. Cir. 1969), to argue that Cook County deprived him of due process because each member of the grand jury did not sign his indictment. He further asserts that Cook County has an unlawful practice of submitting indictments only to the foreman, and not to the whole grand jury. We review de novo a decision to dismiss a case at screening for failure to state a claim. *Schillinger*, 954 F.3d at 994.

Smith's amended complaint failed to state a claim based on the form of his indictment. First, Illinois law requires only the foreman to sign grand-jury indictments, so to prevail, Smith would have to establish that the Illinois rule violates the federal constitution. 725 ILCS 5/112-4(d). But federal law does not require every grand juror's signature even on federal indictments. FED. R. CRIM. P. 6(c) ("The foreperson . . . will sign all indictments."). Second, even the absence of required signatures would not make the indictment constitutionally deficient. In *United States v. Irorere*, we addressed a challenge to the sufficiency of a federal indictment that lacked the signatures of the

grand jury foreperson and the prosecutor, both required by the Federal Rules. 228 F.3d 816, 830 (7th Cir. 2000); FED. R. CRIM. P. 6(c), 7(c)(1). We concluded that the missing signatures were "mere technical deficiencies," not fatal defects. *See id.* at 831; *see also People v. Benitez*, 661 N.E.2d 344, 348 (Ill. 1996).

More fundamentally, the Fifth Amendment's grand jury requirement does not even apply to the states—they can use whatever charging mechanism they choose, so long as it provides due process. *Peters v. Kiff*, 407 U.S. 493, 496 (1972). And all the Fourteenth Amendment requires is that a defendant received adequate notice of the specific charge against him and a fair opportunity to defend himself. *See Ashburn v. Korte*, 761 F.3d 741, 758 (7th Cir. 2014) (citing *Bae v. Peters*, 950 F.2d 469, 478 (7th Cir. 1991)). Because Smith does not allege that he lacked adequate notice of the charges, he cannot establish a constitutional violation based on the form of the indictment.

Gaither, which is not binding on us, does not suggest otherwise. There, only the grand jury foreman had seen the indictment, while the other grand jurors had reviewed a "presentment" devoid of the facts underlying the charge. 413 F.2d at 1065. The D.C. Circuit concluded that this procedure was "erroneous." *Id.* at 1070. But this does not help Smith: the court went on to conclude that there was no constitutional violation because Gaither had identified no prejudice. *Id.* at 1075.

Finally, Smith's contention that Cook County prosecutors unlawfully submit indictments only to the grand jury foreman is unavailing. As noted above, neither Illinois law nor the federal Constitution requires every grand juror to sign. And Smith pleads no facts—apart from the absence of those unnecessary signatures—to support his allegation that full grand juries do not vote on indictments in Cook County. Because only the foreman's signature is required, it would not be reasonable to infer from the lack of other signatures that other jurors did not vote on the indictment, and so Smith does not state a claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Finally, for clarity of the record, we note that district court stated that the dismissal of Smith's case for failure to state a claim would be a strike under 28 U.S.C. § 1915(g), and he incurs another one for this appeal, *see id.*

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Chet Smith (2018-0909024),	)	
	)	
Plaintiff,	)	
	)	Case No. 22-cv-1678
v.	)	
	)	Judge Robert M. Dow, Jr.
Cook County, Illinois,	)	
	)	
Defendant.	)	

ORDER

Plaintiff's amended complaint [9] is dismissed for failure to state a claim. Plaintiff's motions for attorney representation [3, 8] are denied as moot. The dismissal of this case counts as a dismissal under 28 U.S.C. §§ 1915(g), 1915A. Civil case terminated.

STATEMENT

Plaintiff Chet Smith, a detainee at Cook County Jail, brings this pro se federal civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's complaint was dismissed without prejudice for failure to state a claim and he was given an opportunity to submit an amended complaint. See [7]. Currently before the Court is Plaintiff's amended complaint [9] for initial review.

Under 28 U.S.C. § 1915A, the Court is required to screen pro se prisoners' complaints and dismiss them if they are frivolous or malicious, fail to state a claim on which relief may be granted, or seek monetary relief against a defendant who is immune from such relief. Under Federal Rule of Civil Procedure 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). Under federal notice-pleading standards, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. Put differently, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true." Alam v. Miller Brewing Co., 709 F.3d 662, 665-66 (7th Cir. 2013). Courts also construe pro se complaints liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007).

Plaintiff indicates that he has two other lawsuits pending in this district regarding his arrest in 2018. See Smith v. Cook County, Ill., No. 19-cv-3373; Smith v. Biggane et al., No. 19-cv-6816. Plaintiff's amended complaint in this action, however, differs little from his original complaint,

and thus cannot proceed. Plaintiff again names Cook County, Illinois, as the sole defendant, and makes several allegations against State's Attorney Jenkins. He alleges that the State's Attorney should not have prosecuted the case against him because of a lack of probable cause related to the police officer's conduct (which is the subject of Plaintiff's other case, No. 18-cv-6816). [9 at 4-5.] Plaintiff asserts that the State's Attorney returned an indictment against him, but the indictment was not signed by members of the grand jury. [Id. at 5.] He alleges further that all members of the grand jury did not sign the indictment against him. [9 at 6-7.] Lastly, Plaintiff claims that the State's Attorney has withheld exculpatory evidence, and that Cook County is liable for the misconduct he alleges. [Id. at 7.] Plaintiff's amended complaint fails to cure the deficiencies found in the original complaint.

Plaintiff attempts to bring claims against State's Attorney Jenkins related to the decision to bring a criminal prosecution against him. However, a State's Attorney is an improper defendant because he is "shielded by absolute immunity when he acts 'as an advocate for the state.'" Smith v. Power, 346 F.3d 740, 742 (7th Cir. 2003) (citing Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993)). Additionally, as the Court explained in its last order [see 7 at 2], the absence of signatures on the indictment against him does not rise to a constitutional violation. People v. Benitez, 169 Ill. 2d 245, 252–53 (Ill. 1996) ("the mere absence of signatures is not fatal to an otherwise valid indictment"); People ex rel. Merrill v. Hazard, 361 Ill. 60, 63 (Ill. 1935) (the Court is "of the opinion that the signature of the foreman of the grand jury is required only as a matter of direction to the clerk and for the information of the court; that its presence or absence does not materially affect any substantial right of the defendant; and that it neither assures to him nor prevents him from having a fair trial."); see also United States v. Irorere, 228 F.3d 816, 831 (7th Cir. 2000) ("Because the alleged failure of the grand jury foreperson and the attorney for the government to sign the indictment would be mere technical deficiencies, and because the defendant does not allege that the indictment did not adequately inform him of the charges against him or otherwise prejudice his defense, the defendant's challenge to the sufficiency of the indictment is without merit.").

Furthermore, Plaintiff again fails to state a claim against Cook County, Illinois. First, there is no respondeat superior (or supervisor) liability under § 1983, see Kinslow v. Pullara, 538 F.3d 687, 692 (7th Cir. 2008), so Cook County cannot be held liable under § 1983 "for its employee's misconduct." Nor has Plaintiff alleged a failure to train claim. A plaintiff pleading a claim premised on a failure to train must meet a high threshold to establish the claim because "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." Connick v. Thompson, 563 U.S. 51, 61 (2011). "A municipality's failure to train its employees in a relevant respect must amount to deliberate indifference to the rights of persons with whom the [untrained employees] come into contact. Only then can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983." Connick, 563 U.S. at 61 (internal quotations and citations omitted).

"A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference" in the failure-to-train context. Connick, 563 U.S. at 62 (internal quotation marks omitted). Here, Plaintiff has failed to sufficiently allege a pattern of similar constitutional violations other than the lack of signatures on indictments, which as indicated above, does not amount to a constitutional violation. Plaintiff's allegations do not bring

his claims within the "narrow range of circumstances" where the Supreme Court has allowed a "single-incident" theory of Monell liability might be sufficient. To fall within that range, the alleged harm must be a "highly predictable consequence" of a policy. Connick, 563 U.S. at 63 (quoting Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 409 (1997)). In Connick, the Court found that the failure to train prosecutors on their obligations under Brady v. Maryland, 373 U.S. 83 (1963), did not fall under that "narrow range" because a Brady violation was not an "obvious consequence" of that failure to train, given that prosecutors are independently equipped and ethically obligated to understand and comply with Brady. Connick, 563 U.S. at 63-64. The same would apply to the State's Attorney who are also independently equipped and ethically obligated to understand and comply criminal procedures and requirements.

This is Plaintiff's second attempt to state a claim based on these set of circumstances, and his claims essentially mirror those of the original complaint. Thus, it appears that Plaintiff has presented his best attempt and allowing any further amendment would be futile. See Wade v. Barr, 775 Fed. App'x 247, 248 (7th Cir. 2019) ("Judges ordinarily should give a pro se plaintiff at least one opportunity to amend a complaint unless amendment would be futile.") Accordingly, the matter is dismissed with prejudice for failure to state a claim.

If Plaintiff wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. See Fed. R. App. P. 4(a)(1). Plaintiff is advised that if he seeks to appeal, he will be required to pay the $505 filing fee as he has now accumulated four "strikes" (dismissals within the meaning of 28 U.S.C. § 1915(g)). See Smith v. City of Chicago, No. 1:20-cv-7776 (N.D. Ill.) (dismissed for failure to state a claim on June 15, 2021); Smith v. City of Chicago, No. 1:21-cv-3494 (N.D. Ill.) (dismissed for failure to state a claim and as frivolous on July 23, 2021); Smith v. Doe, No. 1:21-cv-0927 (N.D. Ill.) (dismissed for failure to state a claim on August 27, 2021); and the instant case.

Plaintiff need not bring a motion to reconsider this Court's ruling to preserve his right to appeal. However, if Plaintiff wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. See Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. See Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. See Fed. R. App. P. 4(a)(4)(A)(iv). A Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. See Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. See Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. See Fed. R. App. P. 4(a)(4)(A)(vi).

Date: August 22, 2022

Robert M. Dow, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Chet Smith (#2018-0909024)

Plaintiff(s),

v.

Cook County, IL

Defendant(s).

Case No. **22-cv-01678**

Judge Robert M. Dow

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

X other: Failure to state a claim. The dismissal of this case counts as a dismissal under 28 U.S.C. §§ 1915(g), 1915A.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
X decided by Judge Robert M. Dow

Date: 8/22/2022

Thomas G. Bruton, Clerk of Court

Carolyn Hoesly, Deputy Clerk