APPENDICES

Decision of the U. S. Court of Appeals for the Sixth Circuit.

APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 21-3101

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PEYTON JOHN WESLEY HOPSON,	)	
	)	
Plaintiff-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE SOUTHERN DISTRICT OF
DEBORAH S. HUNT,	)	OHIO
	)	
Defendant-Appellee.	)	

ORDER

Before: SUTTON, Chief Judge; GILMAN and DAVIS, Circuit Judges.

Peyton John Wesley Hopson, a pro se Ohio prisoner, appeals the district court's judgment dismissing his civil rights action construed as filed pursuant to the doctrine announced in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Hopson has filed a motion for oral argument. 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).

In 2015, Hopson filed a 42 U.S.C. § 1983 action, asserting that, prior to his current incarceration, the Stark County (Ohio) Sheriff's Office and a deputy sheriff had wrongly and repeatedly increased his registration requirements as a sex offender and had falsified the charge underlying his registration. Hopson alleged that he had been convicted of attempted rape, but that the deputy registered the charge as rape. The district court dismissed the complaint for failure to state a claim because Hopson had asserted only state-law violations, had not asserted a constitutional violation, and the sheriff's office was not a legal entity subject to suit under § 1983. *See* 28 U.S.C. §§ 1915(e), 1915A. The district court certified that an appeal could not be taken in good faith.

Hopson filed a notice of appeal but, despite instructions from this court, did not move for leave to proceed in forma pauperis ("IFP") on appeal or pay the filing fee. Consequently, we dismissed his appeal for want of prosecution. *Hopson v. Stark Cnty. Ohio, Sheriff's Office*, No. 15-4239 (6th Cir. Dec. 30, 2015).

In 2018, Hopson moved for relief from judgment under Federal Rule of Civil Procedure 60(b)(6), arguing that the district court had erred by dismissing his action without notice and an opportunity to amend the complaint, and by requiring him to pay the filing fee in installments without permitting him to litigate. The district court denied the motion. We affirmed, reasoning that a Rule 60(b)(6) motion may not serve as a substitute for an appeal, that Hopson could have raised his arguments in an appeal from the district court's prior judgment, and that he had missed his opportunity to do so when he failed to prosecute his appeal. *Hopson v. Stark Cnty. Ohio, Sheriff's Office*, No. 18-4196 (6th Cir. Feb. 26, 2020). The clerk recalled the mandate after Hopson filed a petition for rehearing, but issued the mandate anew after this court denied the petition.

Seeking money damages, Hopson filed the current suit against Deborah S. Hunt, Clerk of Court for the United States Court of Appeals for the Sixth Circuit. Hopson asserted that Ms. Hunt dismissed his 2015 appeal solely because he could not afford to pay the filing fee and that the dismissal violated his First Amendment right of access to the courts. Hopson further contended that the dismissal of his 2015 appeal led to the dismissal of his Rule 60(b) motion.

After granting Hopson's IFP motion, a magistrate judge recommended dismissing the action for failure to state a claim because Ms. Hunt was entitled to quasi-judicial immunity and the action was barred by Ohio's two-year statute of limitations.

Over Hopson's objections, the district court adopted the magistrate judge's report as to the immunity holding, declined to address the statute-of-limitations analysis, and dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). After we denied Hopson's IFP motion, Hopson paid the filing fee.

On appeal, Hopson argues that (1) Ms. Hunt's failure to appoint counsel on appeal in No. 15-4239 to challenge the district court's certification that an appeal would not be in good faith

did not constitute a discretionary judgment entitled to quasi-judicial immunity because he had a right to appointed counsel; (2) his complaint in the current action was timely under the discovery rule; (3) the dismissal of his appeal in No. 15-4239 should be vacated because counsel was not appointed to assist him with his IFP motion and challenge to the district court's certification; and (4) the recall of the mandate in No. 18-4196 requires the reopening of that appeal, which he incorrectly alleges was dismissed for want of prosecution. Hopson newly alleges that he had tendered a motion for appointed counsel in No. 15-4239 but Ms. Hunt did not file it, that he realized this upon our affirmance in No. 18-4196, and that he then tendered a Rule 60(b)(6) motion to our court, which Ms. Hunt again did not file or return. Hopson surmises that the recall of the mandate in No. 18-4196 was prompted by his unfiled motions.

We review de novo a district court's judgment dismissing a complaint under 28 U.S.C. § 1915(e)(2). *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010).

We decline to consider Hopson's arguments regarding his lack of appointed counsel in No. 15-4239 and the recall of the mandate in No. 18-4196 because he raises the issues for the first time on appeal. Therefore, the issues are forfeited, and no exceptional circumstances merit their consideration. *See Dealer Comput. Servs., Inc. v. Dub Herring Ford*, 623 F.3d 348, 357 (6th Cir. 2010).

The district court properly dismissed Hopson's current action on the ground of judicial immunity. "One who acts as the judge's designee, and who carries out a function for which the judge is immune, is likewise protected" by judicial immunity. *Johnson v. Turner*, 125 F.3d 324, 333 (6th Cir. 1997). Therefore, a court clerk may be entitled to quasi-judicial immunity. *See Ward v. City of Norwalk*, 640 F. App'x 462, 466-67 (6th Cir. 2016); *Bradley v. United States*, 84 F. App'x 492, 493 (6th Cir. 2003); *Foster v. Walsh*, 864 F.2d 416, 417 (6th Cir. 1988) (per curiam). We conclude that Ms. Hunt has quasi-judicial immunity because her alleged acts were judicial in nature and were not taken in a complete absence of jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam). Because judicial immunity applies, we decline to review the magistrate judge's statute-of-limitations analysis.

For these reasons, we **AFFIRM** the district court's judgment and **DENY** Hopson's motion for oral argument.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Decision of the U. S. District Court for the Southern District.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

PEYTON JOHN WESLEY HOPSON,

Plaintiff,

v.

DEBORAH S. HUNT,

Defendant.

Case No. 2:20-cv-4751
JUDGE SARAH D. MORRISON
MAGISTRATE VASCURA

OPINION & ORDER

This 42 U.S.C. § 1983 matter is before the Court upon consideration of an Order and Report and Recommendation (R&R) issued by the Magistrate Judge on September 21, 2020. (ECF No. 2). In key part, the R&R recommends dismissal under 28 U.S.C. § § 1915(e)(2) and 1915A(b)(1) because Defendant Deborah Hunt is judicially immune, and, alternatively, because the statute of limitations has expired. *Id.* at 6-8. Plaintiff Peyton John Wesley Hopson objects. (ECF No. 4.) For the reasons that follow, the Court **OVERRULES** the objections and **ADOPTS** the R&R in its entirety.

BACKGROUND

The R&R correctly sets forth an overview of this action as follows:

> According to the Complaint, Plaintiff filed a § 1983 action in the United States District Court for the Northern District of Ohio against Stark County Deputies in 2015. The trial court dismissed his action on an initial screen for failure to state a claim on which relief may be

> granted. *See Hopson v. Stark Cty. Sheriff's Office*, No. 5:15-CV-992, 2015 WL 13866562, at *2 (N.D. Ohio Oct. 16, 2015) ("The 992 Action"). In the same order, the trial court certified that any appeal would not be taken in good faith. *Id.* Plaintiff appealed the order dismissing his action to the United States Court of Appeals for the Sixth Circuit, but neither moved for leave to proceed in forma pauperis nor paid the filing fee. (The 992 Action, ECF No. 12.) The Sixth Circuit consequently dismissed Plaintiff's appeal pursuant to Sixth Circuit Rule 45(a). (*Id.*, ECF No. 14.)
>
> In the instant action, Plaintiff now asserts that the 6th Circuit's dismissal of his appeal violated his First Amendment right to access to the courts. According to Plaintiff, Defendant dismissed his appeal "solely because poverty made it impossible for him to pay litigation cost." (Compl. 5, ECF No. 1.) Plaintiff seeks monetary damages, specifically $200,000 for emotional distress, an unspecified amount for the cost of future mental health care, $1010 for reimbursement of filing fees, and $50,000 in punitive damages.

(ECF No. 2 at 3.) The R&R concluded that dismissal was proper because Defendant, who is the Clerk of the United States Court of Appeals for the Sixth Circuit, acted in a quasi-judicial manner by dismissing Plaintiff's appeal under Sixth Circuit Rule 45(a) for failure to pay the filing fee via on order ("Order") dated December 30, 2015.[1] *Id.* at 5 (citing *Bradley v. United States*, 84 F. App'x 492, 493 (6th Cir. 2003) (holding defendants acting in quasi-judicial duties were immune from suit). The Magistrate found no exceptions to judicial immunity were present in this instance. *Id.* at 6. So, the R&R held that Defendant was entitled to judicial immunity.

[1] Sixth Cir. R. 45 empowers the Clerk to prepare, sign and enter such orders without submission to the court or to a judge.

The R&R also recommends dismissal on an alternative theory—expiration of the statute of limitations. The applicable statute of limitations is two years. The action Plaintiff complains about took place in 2015. This case was filed in 2020. Thus, because Plaintiff lodged the instant matter "well beyond the two-year" limit, the R&R suggested dismissal. *Id.* at 6-7.

STANDARD OF REVIEW

The federal *in forma pauperis* statute, 28 U.S.C. § 1915, "is designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989) (citation omitted). Because a nonpaying litigant "lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits," 28 U.S.C. § 1915(e) provides in pertinent part:

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) The allegation of poverty is untrue; or
>
> (B) The action or appeal—
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). Similarly, 28 U.S.C. § 1915A requires courts to screen complaints to "identify cognizable claims or dismiss the complaint, or any portion of

the complaint, if the complaint—is frivolous, malicious, or fails to state a claim upon which relief may be granted."

The same "dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim under [28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A] because the relevant statutory language tracks the language of Rule 12(b)(6)." *Hill v. Lappin*, 630 F.3d 468, 470-471 (6th Cir. 2010). Thus, the Court must construe the complaint in the light most favorable to the plaintiff and determine whether the factual allegations present a plausible claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). *See also Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (clarifying the plausibility standard articulated in *Twombly*).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although a plaintiff's complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Twombly*, 550 U.S. at 555. In other words, a complaint is not sufficient if it "tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). However, "[p]*ro se* complaints are to be held 'to less stringent standards than formal pleadings drafted by lawyers,' and should therefore be construed liberally." *Garrett v. Belmont County Sheriff's Dep't*, 374 Fed. Appx. 612, 614 (6th Cir. 2010) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

ANALYSIS

Presently, Plaintiff argues that the Court should reject the R&R because the Order deprived him of the assistance of counsel and deprived him of the right to access the courts. (ECF No. 4 at 11.) Because of these alleged effects, he maintains, Defendant is not entitled to quasi-judicial immunity. But this is not an objection; rather, it is a re-hashing of the Complaint's allegations. *See* ECF No. 1-1 at 5. Additionally, it fails to address the fact that the Magistrate correctly held that judicial immunity may be extended to judicial staff, like the clerk of court, when that staff member is acting in a quasi-judicial capacity. *See Bradley*, 84 F. App'x at 493. Here, Defendant undoubtedly acted in a quasi-judicial capacity by filing the Order under 6 Cir. R. 45(a). And, while judicial immunity does not apply to nonjudicial actions, i.e., actions not taken in the judge's judicial capacity, or for actions taken in the complete absence of all jurisdiction, neither of these instances are present in the case *sub judice*. *Id.* at 1116. The Magistrate therefore properly determined that Defendant is entitled to judicial immunity.

Because the Court affirms the R&R's immunity holding, the Court will not address Plaintiff's objection as to the R&R's statute of limitations analysis.

Upon *de novo* review, and mindful of Plaintiff's *pro se* status, the Court concludes that Plaintiff fails to allege any plausible facts which amount to a viable claim under § 1915(e). Consequently, Plaintiff's Objections (ECF No. 4) are **OVERRULED** and his claims are dismissed pursuant to § 1915(e).

CONCLUSION

Plaintiff's Objections (ECF No. 4) are **OVERRULED**. The Court **ADOPTS** the R&R (ECF No. 2) in full.

Plaintiff's claims are **DISMISSED**. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE

Decision of the U. S. Court of Appeals for the Sixth Circuit.

APPENDIX C

No. 21-3101

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PEYTON JOHN WESLEY HOPSON,)
)
Plaintiff-Appellant,)
)
v.) ORDER
)
DEBORAH S. HUNT,)
)
Defendant-Appellee.)

Before: SUTTON, Chief Judge; GILMAN and DAVIS, Circuit Judges.

Peyton John Wesley Hopson, a pro se Ohio prisoner, petitions for rehearing of this court's order of May 30, 2023, which affirmed the district court's judgment dismissing his civil rights action construed as filed pursuant to the doctrine announced in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2).

We therefore **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Decision of the U. S. District Court for the Northern District.

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PEYTON JOHN WESLEY HOPSON, PLAINTIFF, vs. STARK COUNTY SHERIFF'S OFFICE, et al, DEFENDANTS.	)	CASE NO. 5:15-cv-992 JUDGE SARA LIOI MEMORANDUM OF OPINION AND ORDER

Background

Pro se plaintiff Peyton John Wesley Hopson, a state prisoner incarcerated in the Belmont Correctional Institution, has filed this civil rights action pursuant to 42 U.S.C. § 1983, seeking $10 million in damages from the Stark County, Ohio Sheriff's Office and $1 million in damages from Stark County Deputy Harvey Emery.

Plaintiff alleges he was convicted of attempted rape in Mahoning County in 1990 and, in connection with this conviction, was classified and required under Ohio law to register once a year for ten years as a "sexually oriented offender." He alleges, however, that Deputy Emery subsequently "falsified" the charge of his registration and required him to comply with more stringent registration requirements than required by Ohio law. Specifically, he alleges that, upon his initial registration, Deputy Emery properly classified him as a sexually oriented offender but told him he was required under Ohio law to register every 90 days. Then, upon updating his registration in October 2004, he discovered that

Deputy Emery "had changed the charge of [his] registration" from "attempted rape" to "rape" and told the plaintiff this was also required by law. (Doc. No. 1 at 4.)

Plaintiff alleges that "from October 13, 2004, [he] registered with Stark County Sheriff's office as ordered by [Deputy Emery] every (90) days, under the charge of 'rape,' while residing in Stark County." (*Id.* at 5.) On April 10, 2008, upon registering with the Sheriff's Office, Emery told him that the State had changed his registration status to a tier III habitual sexual predator and that he was required by Ohio law to register for a lifetime.

Based on these allegations, plaintiff alleges that Deputy Emery "had falsified his registration documents and requirements, shamming [sic] [him] into believing that the State of Ohio required a more strenuous registration regimen on [him], [and] disseminating falsified information on [him] throughout the internet, public newspapers, and law enforcement and throughout the judicial system." (*Id.*)

Analysis

Because plaintiff is proceeding *in forma pauperis* and is suing a governmental entity and a governmental officer, the court must review his complaint pursuant to 28 U.S.C. §§ 1915(e) and 1915A. *See McGore v. Wigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). Those statutes require federal district courts to screen and dismiss before service any prisoner complaint that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See Hill v. Lappin*, 630 F.3d 470-71 (2010). In order to state a claim under § 1983, a plaintiff must plead and prove that he was deprived of a right secured

by the Constitution or laws of the United States and that the deprivation was caused by a person acting under color of state law. 42 U.S.C. § 1983; *Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

Upon review, the Court concludes that plaintiff's action must be dismissed for failure to state a claim on which relief may be granted. While courts are generally required to read *pro se* complaints indulgently, *see Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), "[l]iberal construction does not require a court to conjure allegations on a litigant's behalf." *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). Plaintiff's complaint does not allege a plausible claim against either defendant under § 1983 because it does not allege a discernible constitutional violation. On its face, the complaint makes no reference whatsoever to any constitutional claim or provision. Rather, plaintiff's allegations that Deputy Emery "falsified" his registration documents and required him to adhere to more stringent registration requirements than Ohio law requires suggest, at the most, claims under Ohio law concerning the requirements of Ohio's sex offender registration statute, Ohio Rev. Code Ch. 2950.[1]

Plaintiff's complaint fails to state a claim against the Stark County Sheriff's Department for the additional reason that a county sheriff's office is not a legal entity capable of being sued for purposes of § 1983. *Petty v. County of Franklin, Ohio,* 478 F.3d 341 (6th Cir. 2007).

[1] As the court noted in *Doe v. Dann*, No. 1:08 CV 220, 2008 WL 2390778, at *1 (N.D. Ohio June 9, 2008), Ohio has had some form of sex offender registration statute since 1963. In 1996, Ohio's sex offender statute, Ohio Rev. Code Ch. 2950, was modified by Megan's Law. *Id.* Megan's Law classified those who committed sexually oriented offenses as "sexually oriented offenders," "habitual sex offenders," and "sexual predators," and imposed various registration requirements on each. *See id.* at *1-2. Ohio's sex offender registration statute was modified again in 2007 by enactment of the Adam Walsh Act, which now classifies offenders as Tier I, II, and III and requires Tier III offenders to register every 90 days for a lifetime. *See id.* at *2.

Conclusion

Accordingly, for all of the reasons stated above, plaintiff's § 1983 action fails to state a claim on which relief may be granted and is dismissed pursuant to 28 U.S.C. §§ 1915(e) and 1915A. In light of this ruling, plaintiff's pending motion for "service of summons and complaint" (Doc. No. 5) is denied. Additionally, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: October 16, 2015

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

Decision of the U. S. Court of Appeals for the Sixth Circuit.

APPENDIX E

Case No. 15-4239

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

PEYTON JOHN WESLEY HOPSON

Plaintiff - Appellant

v.

STARK COUNTY OHIO, SHERIFF'S OFFICE; HARVEY EMERY, Stark County Deputy

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by **December 14, 2015**.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: December 30, 2015

Decision of the U.S. District Court for the Northern District.

APPENDIX F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PEYTON JOHN WESLEY HOPSON,	)	CASE NO. 5:15-cv-0992
	)	
PLAINTIFF,	)	JUDGE SARA LIOI
	)	
vs.	)	**MEMORANDUM OPINION**
	)	**AND ORDER**
STARK COUNTY SHERIFF'S OFFICE, et al.,	)	
	)	
DEFENDANTS.	)	

Before the Court is the post-judgment (and post-appeal) motion of plaintiff Peyton John Wesley Hopson ("Hopson") for relief from judgment, filed pursuant to Fed. R. Civ. P. 60(b)(6).[1] (Doc. No. 15.)

On May 19, 2015, Hopson, a state prisoner, filed a civil rights lawsuit under 42 U.S.C. § 1983 against the Stark County, Ohio Sheriff's Office and Stark County Deputy Harvey Emery seeking damages arising from their allegedly having falsified his sex offender registration documents. Hopson sought, and was granted, leave to proceed *in forma pauperis*. Under 28 U.S.C. § 1915(b), the Court ordered him to pay the full filing fee (then $350.00) by way of monthly deductions from his prisoner account, not to exceed 20% of each month's income.[2] (*See* Doc. No. 7.)

On October 16, 2015, the same day Hopson was granted pauper status, this Court dismissed his complaint under the authority of 28 U.S.C. § 1915A[3] for failure to state a claim. (*See* Doc. Nos.

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[1] Rule 60(b)(6) provides: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reason[]: . . . (6) any other reason that justifies relief."

[2] Several such payments have been made to date, but the full fee has not yet been satisfied.

[3] Section 1915A provides, in relevant part, that the court "shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity[,]" and "shall identify cognizable claims or

8, 9.) Hopson filed a post-judgment motion for leave to amend (Doc. No. 10), which was denied (Doc. No. 11.) Although Hopson subsequently filed a notice of appeal to the Sixth Circuit (Doc. No. 12), the appeal was dismissed on December 30, 2015 for want of prosecution because Hopson failed to pay the filing fee. (*See* Doc. No. 14.)

Now, more than two years later, Hopson has filed his motion for relief from judgment. He argues that this Court improperly dismissed his action without notice and without an opportunity to amend, that the Court unduly burdened him by requiring the payment of a filing fee even though he was not permitted to litigate his claim, and that he should now be permitted to amend his complaint. Hopson relies upon outdated case law from other circuits to support his arguments.

There is no "other reason that justifies relief" in this case. The Court properly ordered Hopson to pay the full filing fee in installments, as required by 28 U.S.C. § 1915(b). The Court also properly screened Hopson's complaint, prior to service, under 28 U.S.C. § 1915A, and ordered dismissal because it failed to state a claim upon which relief could be granted.

Hopson's motion for relief from judgment (Doc. No. 15) is **denied**.

IT IS SO ORDERED.

Dated: March 29, 2018

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

dismiss the complaint, or any portion of the complaint, if the complaint -- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief."

Decision of the U. S. Court of Appeals for the Sixth Circuit.

APPENDIX G

NOT RECOMMENDED FOR PUBLICATION

No. 18-4196

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PEYTON JOHN WESLEY HOPSON,

Plaintiff-Appellant,

v.

STARK COUNTY OHIO, SHERIFF'S OFFICE; HARVEY EMERY, Stark County Deputy,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

Before: NORRIS, SUTTON, and BUSH, Circuit Judges.

Peyton John Wesley Hopson, a pro se Ohio prisoner, appeals a district court's order denying his construed motion to alter or amend the judgment in his civil rights action filed 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).

Seeking monetary relief, Hopson filed suit against the Stark County (Ohio) Sheriff's Office and a deputy sheriff, asserting that, prior to his current incarceration, the defendants had wrongly and repeatedly increased his registration requirements as a sex offender and had falsified the charge of his registration. After granting Hopson leave to proceed in forma pauperis, the district court sua sponte dismissed his complaint for failure to state a claim because no constitutional violation was alleged and the sheriff's office was not a legal entity subject to suit under § 1983. *See* 28 U.S.C. §§ 1915(e), 1915A.

Hopson then requested the district court to send him a "'leave to amend' complaint form." Construing the request as a motion filed under Federal Rule of Civil Procedure 59(e) or 60, the district court denied relief on the ground that a complaint could not be amended after a case had been dismissed pursuant to the Prison Litigation Reform Act. Hopson's appeal to our court was dismissed for want of prosecution. *Hopson v. Stark Cty. Ohio, Sheriff's Office*, No. 15-4239 (6th Cir. Dec. 30, 2015) (clerk's order).

More than two years later, Hopson filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), arguing that the district court had erred by dismissing his action without notice and an opportunity to amend the complaint and by requiring him to pay the filing fee in installments without permitting him to litigate. The court denied the motion, remarking that Hopson relied on outdated caselaw from other circuits, that § 1915(b) required payment of the filing fee in installments, and that sua sponte dismissal was proper under § 1915A.

Contesting the denial of his Rule 60(b)(6) motion in a "petition for panel rehearing," Hopson contended that current caselaw permitted a post-judgment amendment, and he reasserted his arguments regarding the lack of notice and the fee payments. He also contended that the district court's order concerning his request to amend was "shocking" and "belittling" due to the use of highlighter and a note that said, "please read." When the district court did not immediately rule on his petition, Hopson filed a "motion to proceed to judgment."

The district court denied both of Hopson's motions. Construing the "petition for panel rehearing" as a frivolous motion to reconsider its prior rulings, the court warned Hopson that it would consider imposing sanctions if he continued to file abusive, meritless pleadings.

On appeal, Hopson argues that the district court erred by: (1) denying his Rule 60(b)(6) motion without addressing cited caselaw holding that a prisoner may amend his complaint to avoid a sua sponte dismissal; (2) dismissing his complaint without notice and an opportunity to amend and without finding that the deficiencies in the complaint could not be cured; and (3) failing to recuse herself pursuant to 28 U.S.C. § 455(b).

As an initial matter, we note that the notice of appeal, which refers to the district court's order denying the "petition for panel rehearing" and "motion to proceed to judgment," also serves as a notice of appeal from the district court's order denying Hopson's Rule 60(b)(6) motion. This is so because the "petition for panel rehearing" was essentially construed as a Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment and was filed within twenty-eight days of the denial of the Rule 60(b)(6) motion. *See* Fed. R. App. P. 4(a)(4)(A)(iv); Fed. R. Civ. P. 59(e). It is clear from the notice of appeal and Hopson's brief that he seeks review of the district court's denial of his Rule 60(b)(6) motion. *See Inge v. Rock Fin. Corp.*, 281 F.3d 613, 618 (6th Cir. 2002).

We review the denial of a Rule 60(b) motion for an abuse of discretion. *West v. Carpenter*, 790 F.3d 693, 697 (6th Cir. 2015). We may affirm a district court's ruling for reasons other than those stated by the district court. *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 620 (6th Cir. 2010).

A party may seek relief under Rule 60(b)(6) from a final judgment or order for any reason justifying relief that is not specified in the other subparts of Rule 60(b), but "Rule 60(b)(6) applies only in exceptional or extraordinary circumstances where principles of equity mandate relief." *West*, 790 F.3d at 696-97. And a Rule 60(b) motion may not serve as a substitute for an appeal. *See GenCorp, Inc. v. Olin Corp.*, 477 F.3d 368, 373 (6th Cir. 2007). Thus, "arguments that were, or should have been, presented on appeal are generally unreviewable on a Rule 60(b)(6) motion." *Id.*

No abuse of discretion occurred. The arguments raised by Hopson in his Rule 60(b)(6) motion and petition for panel rehearing could have been raised in an appeal from the district court's judgment. *See id.* Hopson missed his opportunity to do so when he failed to prosecute his appeal.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Decision of the U. S. Court of Appeals for the Sixth Circuit.

APPENDIX H

Case No. 18-4196

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

PEYTON JOHN WESLEY HOPSON

Plaintiff - Appellant

v.

STARK COUNTY, OHIO SHERIFF'S OFFICE; HARVEY EMERY, Stark County Deputy

Defendants - Appellees.

Upon sua sponte consideration, it is **ORDERED** that the mandate in this appeal is hereby recalled.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: March 25, 2020

Sixth Circuit Correspondence.

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

DEBORAH S. HUNT
CLERK

TELEPHONE
(513) 564-7000

April 28, 2021

Peyton John Wesley Hopson
#662444
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, OH 43950

Re: Case No. 18-4196, *Peyton Hopson v. Stark County, Ohio Sheriff's Office, et al.*
Tendered Motion to Reinstate

Dear Mr. Hopson:

This letter is to advise you that your tendered motion to reinstate received by the clerk's office on August 19, 2020 is being returned to you following careful review.

A three-judge panel of this court issued its order on February 26, 2020 affirming the district court's judgment. Your document titled "Motion for Relief from Judgment or Order Rule 60(b)(6)" was received and docketed on March 18, 2020. The court construed this motion as a petition for rehearing of the panel's decision. The panel denied your petition for rehearing by order dated April 7, 2020. Further review of this ruling is not available. Additionally, please be advised that even if the court did not specifically address each of your claims, it does not mean that they were not considered.

Your case is effectively closed at this time and your tendered motion to reinstate is being returned without further action.

Sincerely,
s/ Julie A. Cobble
Chief Deputy Clerk

Enclosure

CERTIFICATE OF COMPLIANCE

No. _____

PEYTOH HOPSON,

Petitioner,

v.

DEBORAH S. HUNT,

Respondent.

As required by Supreme Court Rule 33.1(h), I certify that the petition for writ of certiorari contains 4,057 words, excluding the parts of the petition that are exempt by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2023.

Peyton Hop