

No.
Supreme Court of The United States

Anthony D. Bailey,
Petitioner(s),

vs.
United States District Court et al.,
Respondent(s)

APPENDIX

Exhibit
Pages

Pages

A Document 3 of the lower court. 1 then 8
(Affidavits of A Bias court)

B August 29, 2023 9th Circuit Order. 9th Cir 10

C Proof Case Nos. 95-17213, 98-15212, and 02-11378
were dismissed pursuant to Rule 42-1 not
Title 18 § 1915(g) 11

D 2016 9th Circuit Court Order, disregarding
the provisions of S.O.P. 14.00.00, to deny last
trial on Remand. 12 then 15

E Denial of Appellate Review On Appeal
claims of Most Direct evidence supported filing 16 then 18

F Documents Nos. 52 then 54 of the lower courts
mis-application of the law, to deprive the provisions
of the P.R.A., set forth by Congress. 19 then 57

G Proof of An Implied Acquittal Verdict, 4-29-14
Sept. 20, Eighth Judicial District Court. 58 then 62

1 I, Anthony Bailey, Deponent First duly sworn
2 duly deposed under the Federal Rules Of Evidence,
3 Rule 901 (11) and Chapter 52 of the Nevada Revised
4 Statutes, the herein Exhibits are authenticated
5 true and correct, as will testify upon being
6 called to do so.

7 Date: 11-3-23

8 ~~Anthony Bailey~~
9 Petitioner/Deponent
10 under Penalty Of Perjury. See
11 Title 28 § 1746
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT

A

HDSP_LawLibrary - Activity in Case 2:22-cv-00306-GMN-VCF Bailey v. Nevada Parole Board et al Order on Motion/Application to Proceed in forma pauperis

From: <cmecf@nvd.uscourts.gov>
To: <cmecfhelpdesk@nvd.uscourts.gov>
Date: 3/31/2022 1:43 PM
Subject: Activity in Case 2:22-cv-00306-GMN-VCF Bailey v. Nevada Parole Board et al Order on Motion/Application to Proceed in forma pauperis

*Mis-application
of law & facts*
**EXHIBIT
A**

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 3/31/2022 at 1:41 PM PDT and filed on 3/31/2022

Case Name: Bailey v. Nevada Parole Board et al

Case Number: 2:22-cv-00306-GMN-VCF

Filer:

Document Number: 3

Docket Text:

ORDER. IT IS ORDERED that [2] plaintiff Baileys application to proceed in forma pauperis is GRANTED. IT IS FURTHER ORDERED that [1]-1 plaintiffs complaint is DISMISSED WITHOUT PREJUDICE. Amended Complaint deadline: 5/2/2022. See Order for Details. Signed by Magistrate Judge Cam Ferenbach on 3/31/2022. (Copies have been distributed pursuant to the NEF -cc: Finance, Chief of Inmate Services - JQC)

2:22-cv-00306-GMN-VCF Notice has been electronically mailed to:

HDSP Law Library HDSP_LawLibrary@doc.nv.gov

2:22-cv-00306-GMN-VCF Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1101333072 [Date=3/31/2022] [FileNumber=10629978-0] [ad4f9336919752d743e4d743284c9d1cd75128c4773acec0e28b03f7906d162de8fe79f2087f2561e836913987352c969c7ba85bc8c439097f9662a3fe9bdb90]]

3

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 ***

8 ANTHONY BAILEY,

9 Plaintiff,

10 vs.

11 NEVADA PAROLE BOARD, et al.,

12 Defendants.

Case No. 2:22-cv-00306-GMN-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC No. 2) AND COMPLAINT (ECF No. 1-1)

13 Pro se plaintiff Anthony Bailey filed an application to proceed in forma pauperis (IFP) and a
14 complaint. ECF Nos. 1-1 and 2. I grant plaintiff's application to proceed in forma pauperis. ECF No. 2. I
15 dismiss his complaint without prejudice. ECF No. 1-1.

16
17 **DISCUSSION**

18 Plaintiff's filings present two questions: (1) whether plaintiff may proceed in forma pauperis
19 under 28 U.S.C. § 1915(e) and (2) whether plaintiff's complaint states a plausible claim for relief.

20 **I. Whether Plaintiff May Proceed In Forma Pauperis**

21 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
22 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
23 pay such fees or give security therefor." If the plaintiff is a "prisoner" as defined by 28 U.S.C. §
24 1915(h), as amended by the Prison Litigation Reform Act ("PLRA"), he remains obligated to pay the
25

2
on the
back
side
3

1 entire fee in installments, regardless of whether his action is ultimately dismissed. See 28 U.S.C. §
2 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

3 Under the PLRA, a prisoner seeking leave to proceed IFP must submit a “certified copy of the
4 trust fund account statement (or institutional equivalent) for the prisoner for the six-month period
5 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
6 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial
7 payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
8 average monthly balance in the account for the past six months, whichever is greater, unless the prisoner
9 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the
10 prisoner must collect subsequent payments, assessed at 20% of the preceding month's income, in any
11 month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the
12 entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

13
14 Plaintiff is currently incarcerated in High Desert State Prison. ECF No. 2 at 3. Plaintiff filed a
15 declaration and submitted a certified copy of the trust fund account statement (or institutional
16 equivalent), obtained from the appropriate official of the High Desert State Prison, for the 6-month
17 period immediately preceding the filing of his complaint. He swears he has no income other than the
18 money currently in his prison account. I grant plaintiff's IFP application.

19 **II. Whether Plaintiff's Complaint States a Plausible Claim**

20 **a. Legal Standard**

21 Because the Court grants plaintiff's application to proceed in forma pauperis, it must review
22 plaintiff's complaint to determine whether the complaint is frivolous, malicious, or fails to state a
23 plausible claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a)(2) provides that a
24 complaint must contain “a short and plain statement of the claim showing that the [plaintiff] is entitled
25

1 to relief." Rule 8 ensures that each defendant has "fair notice of what the plaintiff's claim is and the
2 grounds upon which it rests." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346, 125 S. Ct. 1627, 161 L.
3 Ed. 2d 577 (2005). The Supreme Court's decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8's
4 requirements, a complaint's allegations must cross "the line from conceivable to plausible." 556 U.S.
5 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, (2007)). Rule 12(b)(6) of
6 the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim
7 upon which relief can be granted. A complaint should be dismissed under Rule 12(b)(6), "if it appears
8 beyond a doubt that the plaintiff can prove no set of facts in support of her claims that would entitle him
9 to relief." *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

10 "[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than
11 formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v.*
12 *Gamble*, 429 U.S. 97, 106 (1976)). If the Court dismisses a complaint under § 1915(e), the plaintiff
13 should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is
14 clear from the face of the complaint that the deficiencies could not be cured by amendment. *Cato v.*
15 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

17 **b. Complaint**

18 Plaintiff's handwriting is difficult to read, but it appears to state that he is serving ten years in
19 prison and that "holds an entitles to the procedures set forth in Judgement of Conviction (sic), NRS
20 213.1214(2) and the Attorney General Opinion prior to appearing before a parole board, rendering both
21 parole board appearance (sic) unfair due to the board members false representations on the public
22 record." ECF No. 1-1 at 9. Plaintiff alleges that the parole board and its employees violated his civil
23 rights.
24
25

1 "There is no constitutional or inherent right of a convicted person to be conditionally released
2 before the expiration of a valid sentence." *Greenholtz v. Inmates of the Nebraska Penal & Correctional*
3 *Complex*, 442 U.S. 1, 7, 60 L. Ed. 2d 668, 99 S. Ct. 2100 (1979). The United States Supreme Court has
4 held that where a state holds out only the possibility of parole, an inmate has a mere hope that the
5 benefit will be obtained and that hope is not protected by due process. *Id.* at 11 (citing *Meachum v.*
6 *Fano*, 427 U.S. 215, 225, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976)).

7 Under *Heck v. Humphrey*, to recover damages for an unconstitutional conviction or
8 imprisonment, a § 1983 plaintiff must prove the conviction or sentence has been reversed on direct
9 appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a
10 federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487, 114 S. Ct.
11 2364, 129 L. Ed. 2d 383 (1994). The *Heck* test also applies to proceedings that affect the fact or duration
12 of parole. *Jackson v. Vannoy*, 49 F.3d 175, 177 (1995).

13 Challenging the procedures used in parole hearings implicates, "the prisoner's continuing
14 confinement." *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997). "This is true whether that denial
15 is alleged to be improper based upon procedural defects in the parole hearing or upon allegations that
16 parole was improperly denied on the merits." *Id.* When a prisoner claims he is incarcerated due to the
17 "bias" of the judge or state officials it, "implie[s] the invalidity of the [prisoner's] confinement; therefore
18 [the prisoner's] sole remedy [is] a habeas corpus petition." *McQuillion v. Schwarzenegger*, 369 F.3d
19 1091, 1097 (9th Cir. 2004) (Finding that inmates did not have standing to seek relief under § 1983
20 because "bias" could not be addressed by an injunction and the validity of confinement can only be
21 addressed by a habeas corpus petition.)

22 Any claim by a prisoner attacking the fact or duration of his custody pursuant to a criminal
23 conviction or sentence must be brought by way of a petition for a writ of habeas corpus. *Preiser v.*
24
25

1 *Rodriguez*, 411 U.S. 475, 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973); see *Jones v. Cunningham*, 371
2 U.S. 236, 241-43, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963) (holding petitioner on parole is in custody for
3 purposes of habeas corpus review). Where a prisoner raises a claim challenging the legality or duration
4 of his parole status, such claim must be brought in a petition for a writ of habeas corpus. See *Butterfield*
5 *v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997) (holding claim challenging decision finding prisoner
6 ineligible for parole must be brought in habeas corpus).

7 The state law plaintiff cites to states that:

8 The Director shall:

9 (a) Ensure that any employee of the Department who completes an assessment pursuant
10 to subsection 1 is properly trained to assess the risk of an offender to reoffend in a sexual
11 manner.

12 (b) Establish a procedure to:

13 (1) Ensure the accuracy of each completed assessment provided to the Board; and

14 (2) Correct any error occurring in a completed assessment provided to the Board.

15 See NRS 213.1214(2).

16 Plaintiff does not have standing to bring a § 1983 claim to challenge the alleged procedural
17 defects in the parole process and the plaintiff's belief that the board members lied. NRS 213.1214(2)
18 does not create a way for plaintiff to obtain an advisory opinion from the Attorney General's Office or
19 create any rights. Plaintiff's claims challenge the invalidity of his confinement, and thus he fails to state
20 a § 1983 claim against the Nevada Board of Parole Board and the individual defendants. Plaintiff may
21 raise these allegations in a habeas corpus proceeding. This would require that plaintiff file a habeas
22 corpus petition and an in forma pauperis application in a new action, meaning he may not file the
23 petition for habeas corpus in this action. Plaintiff fails to articulate claims against defendants in this
24 action. It is possible that these deficiencies may be cured through amendment. Plaintiff's complaint is
25

1 dismissed without prejudice. I also note that plaintiff has filed dozens of duplicative actions in this
2 Court. I warn plaintiff that his behavior in this Court is bordering on vexatious.¹

3 ACCORDINGLY,

4 I ORDER that plaintiff Bailey's application to proceed in forma pauperis (ECF No. 2) is
5 GRANTED.

6 I FURTHER ORDER that plaintiff's complaint (ECF No. 1-1) is DISMISSED WITHOUT
7 PREJUDICE.

8 I FURTHER ORDER that plaintiff has until Monday, May 2, 2022, to file an amended complaint
9 addressing the issues discussed above. Failure to timely file an amended complaint that addresses the
10 deficiencies noted in this Order may result in a recommendation for dismissal with prejudice.

11 I FURTHER ORDER that if plaintiff files an amended complaint, the Clerk of the Court is
12 directed NOT to issue summons on the amended complaint. I will issue a screening order on the
13 amended complaint and address the issuance of summons at that time, if applicable. See 28 U.S.C. §
14 1915(e)(2).
15

16 I FURTHER ORDER that pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation
17 Reform Act, the Nevada Department of Corrections will forward payments from the account of Anthony
18 Bailey #36192 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding
19 month's deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid
20 for this action. If this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. §
21 1915(b)(2).
22
23

24
25 ¹ A district court has the "inherent power to enter pre-filing orders against vexatious litigants." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (citing 28 U.S.C. § 1651(a)).

1 I FURTHER ORDER the Clerk of the Court to send a copy of this order to the Finance Division
2 of the Clerk's Office.

3 I FURTHER ORDER the Clerk of the Court to send a copy of this order to the attention of Chief
4 of Inmate Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

5 I CAUTION plaintiff that continuing to file duplicative and/or frivolous lawsuits may result in
6 adverse consequences, including possible sanctions or a finding that he is a vexatious litigant.

7 **NOTICE**

8 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
9 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
10 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
11 may determine that an appeal has been waived due to the failure to file objections within the specified
12 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
13 objections within the specified time and (2) failure to properly address and brief the objectionable issues
14 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
15 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
16 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
17 notification with the court of any change of address. The notification must include proof of service upon
18 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.
19 **Failure to comply with this rule may result in dismissal of the action.**

20
21 IT IS SO ORDERED.

22 DATED this 31st day of March 2022.

23 
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE

EXHIBIT

B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 29 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY BAILEY,

Plaintiff-Appellant,

v.

NEVADA PAROLE BOARD; et al.,

Defendants-Appellees.

No. 23-15120

D.C. No.

2:22-cv-00306-GMN-VCF **B**

District of Nevada,
Las Vegas

ORDER

EXHIBIT

Before: TASHIMA, S.R. THOMAS, and KOH, Circuit Judges.

The notice of appeal filed January 25, 2023 in the above-referenced district court docket is subject to the pre-filing review order entered in docket No. 12-80059. Prior to reviewing this case pursuant to the pre-filing review order, the court issued an order to show cause on April 6, 2023 directing appellant to file a statement showing why appellant's in forma pauperis status should not be revoked in this appeal pursuant to 28 U.S.C. § 1915(g). Appellant did not file a response in this docket, but filed a submission on April 25, 2023 in appeal No. 22-16389 that this court construes as a response to the April 6, 2023 order.

Upon review of the record and appellant's April 25, 2023 submission in appeal No. 22-16389, appellant's in forma pauperis status is revoked for this appeal, *see* 28 U.S.C. § 1915(g), and the appeal will not be permitted to proceed.

See In re Thomas, 508 F.3d 1225 (9th Cir. 2007). Appeal No. 23-15120 is

therefore dismissed.

This order, served on the district court for the District of Nevada, will constitute the mandate of this court. No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions will be entertained.

DISMISSED.

EXHIBIT

C

PACER fee: Exempt

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 02-16378
Nature of Suit: 3555 Prison Condition
 Bailey v. Leonhardt, et al
Appeal From: U.S. District Court for Nevada, Reno
Fee Status: Due

Docketed: 07/15/2002
Termed: 11/18/2002

EXHIBIT
C

Case Type Information:

- 1) prisoner
- 2) state
- 3) civil rights

Originating Court Information:

District: 0978-3 : CV-99-00414-HDM
Trial Judge: Howard D. McKibben, Senior District Judge
Date Filed: 07/30/1999
Date Order/Judgment: 06/27/2002

Date NOA Filed:
 07/08/2002

Prior Cases:

<u>00-15094</u>	Date Filed: 01/19/2000	Date Disposed: 03/27/2000	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>00-16228</u>	Date Filed: 06/30/2000	Date Disposed: 12/28/2000	Disposition: COA Denied - Judge Order
<u>01-71249</u>	Date Filed: 07/24/2001	Date Disposed: 09/14/2001	Disposition: Denied - Judge Order
<u>95-16507</u>	Date Filed: 08/10/1995	Date Disposed: 10/15/1996	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>95-17087</u>	Date Filed: 11/03/1995	Date Disposed: 01/25/1996	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>95-17213</u>	Date Filed: 11/21/1995	Date Disposed: 02/07/1996	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>96-15609</u>	Date Filed: 04/10/1996	Date Disposed: 01/24/1997	Disposition: Affirmed - Memorandum
<u>96-16300</u>	Date Filed: 07/15/1996	Date Disposed: 12/18/1996	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>97-17450</u>	Date Filed: 12/31/1997	Date Disposed: 01/26/1998	Disposition: COA Denied - Judge Order
<u>97-80037</u>	Date Filed: 01/29/1997	Date Disposed: 02/21/1997	Disposition: Denied - Judge Order
<u>98-15212</u>	Date Filed: 02/13/1998	Date Disposed: 06/15/1998	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>98-16369</u>	Date Filed: 07/27/1998	Date Disposed: 08/17/1999	Disposition: Remanded - Memorandum

Current Cases:

Related	Lead	Member	Start	End
	<u>02-16378</u>	<u>02-73852</u>	11/13/2002	

ANTHONY BAILEY (State Prisoner: 36192)
 Plaintiff - Appellant,

Anthony Bailey
 [NTC Pro Se]
 HDSP - HIGH DESERT STATE PRISON (INDIAN SPRINGS)
 P.O. Box 650
 Indian Springs, NV 89070-0650

v.

JOHN LEONHARDT
 Defendant - Appellee,

Julie A. Slabaugh, Esquire, Senior Deputy Attorney General
 Direct: 775-684-1131
 Email: jslabaugh@ag.nv.gov
 Fax: 775-684-1145
 [COR LD NTC State Atty General]
 AGNV - Nevada Office of the Attorney General
 100 N Carson Street
 Carson City, NV 89701

ROBERT BAYER
 Defendant - Appellee,

Julie A. Slabaugh, Esquire, Senior Deputy Attorney General
 Direct: 775-684-1131
 [COR LD NTC State Atty General]
 (see above)

FRANKIE S. DEL PAPA
 Defendant - Appellee,

Julie A. Slabaugh, Esquire, Senior Deputy Attorney General
 Direct: 775-684-1131
 [COR LD NTC State Atty General]
 (see above)

- 02/13/1998 ☐ 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL FOR APLE AND APLT IN PRO SE. CADS SENT (Y/N): N. setting schedule as follows: appellant's opening brief is due 3/25/98; appellee's brief is due 4/24/98; appellant's optional reply brief is due 14 days from service of the answering brief. [98-15212] (Hom, Howard) [Entered: 02/13/1998 09:11 AM]
- 02/13/1998 ☐ 2 Filed certificate of record on appeal RT filed in DC n/a. [98-15212] (Hom, Howard) [Entered: 02/13/1998 09:15 AM]
- 02/25/1998 ☐ 3 Sent Notice of Referral to district court. Response to notice due 3/25/98. [98-15212] (XX) [Entered: 02/25/1998 03:23 PM]
- 03/06/1998 ☐ 5 Received Appellant Anthony Bailey's brief in 0 copies 6 pages (Informal: yes) deficient no copies: notified aplt. Served on 3/6/98 [98-15212] (XX) [Entered: 03/09/1998 10:07 AM]
- 03/06/1998 ☐ 8 Filed Appellant Anthony Bailey's motion to proceed in forma pauperis served on (no service) [3409263] (MOATT) [98-15212] (XX) [Entered: 03/09/1998 11:50 AM]
- 03/09/1998 ☐ 7 Filed response of Howard D. McKibben to Sec. 1915 notice. Appeal filed in good faith (Y/N): NO - MOATT (XX) [Entered: 03/09/1998 11:03 AM]
- 03/18/1998 ☐ 9 Received letter from pro se re: in response to brief deficiency letter, aplt states she cannot send copies. (MOATT) (XX) [Entered: 03/20/1998 09:47 AM]
- 04/20/1998 ☐ 11 Requested District Court casefile. (MOATT) (Kwong, Johnny) [Entered: 04/20/1998 10:41 AM]
- 04/27/1998 ☐ 12 Received orig. 15 copies Ray Hunnell's brief of 17 pages; served on 4/23/98 deficient: ifp pending [98-15212] (XX) [Entered: 04/28/1998 03:23 PM]
- 05/01/1998 ☐ 13 Received original District Court case file. (Kwong, Johnny) [Entered: 05/01/1998 11:44 AM]
- 05/08/1998 ☐ 14 Received orig. 0 copies Anthony Bailey's reply brief (Informal: yes) of 9 pages; served on 5/4/98 deficient ifp pending. [98-15212] (XX) [Entered: 05/08/1998 02:21 PM]
- 05/15/1998 ☐ 15 Filed order (Stephen S. TROTT, Ferdinand F. FERNANDEZ): The DC has certified that this appeal is not taken in good faith, and so has revoked aplt's IFP status. Our review of the record confirms that aplt is not entitled to IFP status for this appeal. (CITE). Accordingly, within 21 days after the date of this order, aplt shall pay \$105 to the DC as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the clerk for failure to prosecute, regardless of further filings. 42-1. NO MOTIONS FOR RECON, CLARIFICATION, OR MODIFICATION of the denial of IFP status for thi appeal hall be filed or entertained If aplt pay the required fee the clerk hall file aplt opening & reply briefs and make the necessary copies and file aple's brief. The case will be ready for calendaring after the filing of the briefs. [98-15212] (XX) [Entered: 05/15/1998 10:03 AM]
- 06/01/1998 ☐ 16 Received Appellant Anthony Bailey's motion to strike order of 5/15/98; served on 5/21/98 [3462034] (cannot accept per order of 5/15/98) [98-15212] (XX) [Entered: 06/01/1998 03:42 PM]
- 06/08/1998 ☐ 18 Received letter from pro se dated 5/31/98 re: wants copy of certification from DC. (sent copy to aplt) (XX) [Entered: 06/29/1998 12:47 PM]
- 06/15/1998 ☐ 17 Order filed (Dep. Clk. dg) dismiss case for failure to prosecute (C.R. 42-1) A certified copy of this order sent to the district court shall act as and for the mandate of this court. (Procedurally Terminated Without Judicial Action; Default.) [98-15212] (XX) [Entered: 06/15/1998 09:58 AM]
- 07/06/1998 ☐ 20 District court casefile returned. (Certified Mail#: UPS) (Kwong, Johnny) [Entered: 07/06/1998 11:16 AM]
- 10/14/1999 ☐ 21 NO ORIGINAL RECORD (BL) [Entered: 10/14/1999 11:29 AM]

EXHIBIT

D

FILED

OCT 06 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EXHIBIT
D

ANTHONY BAILEY,

Plaintiff-Appellant,

v.

RICH SUEY, Cpt.; et al.,

Defendants-Appellees.

No. 15-15944

D.C. No. 2:12-cv-01954-JCM-
CWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Former Clark County pretrial detainee Anthony Bailey appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action challenging his conditions of confinement. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). We affirm

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in part, vacate in part, and remand.

The district court properly granted summary judgment on Bailey's claim alleging a denial of outdoor exercise because under any potentially applicable standard Bailey failed to raise a genuine dispute of material fact as to whether he was denied outdoor exercise for a period of time longer than permitted by the Fourteenth Amendment. *See Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006) (summary judgment is proper if, viewing the evidence in the light most favorable to the non-moving party, there is not "sufficient evidence for a reasonable jury to return a verdict for the non-moving party"); *Frost*, 152 F.3d at 1128 (conditions of confinement claim by pretrial detainee is analyzed under the Fourteenth Amendment Due Process Clause rather than under the Eighth Amendment, but same standards apply); *cf. Castro v. County of Los Angeles*, No. 12-56829, --- F.3d ----, 2016 WL 4268955, at *7 (9th Cir. Aug. 15, 2016) (en banc) (setting forth elements of Fourteenth Amendment failure-to-protect claim by pretrial detainee).

The district court overlooked Bailey's inadequate ventilation claim. Bailey submitted declarations stating that his health suffered because the air filters at the detention center were unclean. Therefore, we conclude that Bailey raised a genuine dispute of material fact as to whether the detention center's ventilation

system harmed his health. *See Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996) (“Inadequate ventilation and air flow violates the Eighth Amendment if it undermines the health of inmates and the sanitation of the penitentiary.” (citation and internal quotation marks omitted)).

We decline to affirm summary judgment on Bailey’s inadequate ventilation claim on the alternate ground that Bailey failed to exhaust available administrative remedies because defendants failed to present probative evidence that Bailey failed to appeal fully the denial of his grievance. *See Albino v. Baca*, 747 F.3d 1162, 1169-70, 1172 (9th Cir. 2014) (en banc).

Therefore, we affirm the district court’s summary judgment on Bailey’s outdoor exercise claim, and vacate and remand for further proceedings on Bailey’s inadequate ventilation claim. On remand, the district court may consider whether summary judgment on the inadequate ventilation claim for failure to exhaust is appropriate. If necessary, the district court may receive additional evidence on this issue.

The district court properly dismissed Clark County because Bailey failed to allege facts sufficient to show that Clark County was involved in any alleged constitutional deprivation. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must still

present factual allegations sufficient to state a plausible claim for relief); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (setting forth standard of review for dismissal under 28 U.S.C. § 1915A).

The district court did not abuse its discretion in denying Bailey's motion to compel discovery because Bailey failed to meet and confer with defendants and the motion did not set out the text of the requested discovery. *See* Fed. R. Civ. P. 37(a)(1) (motion to compel discovery must include certification that movant has in good faith conferred or attempted to confer with opposing party); D. Nev. R. 26-7(b) (motion to compel discovery must set forth in full the text of the discovery originally sought and any response); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth standard of review).

The district court did not abuse its discretion in denying Bailey's Fed. R. Civ. P. 59(e) motion to alter or amend the judgment because the purportedly newly discovered evidence and the new allegations are inconsistent with the allegations in the complaint. *See Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (setting forth standard of review and listing grounds upon which a Rule 59(e) motion may be granted).

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

EXHIBIT

E

Relig.

Exhibit
E

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY BAILEY,

Plaintiff,

v.

WARDEN BRIAN WILLIAMS, et al.,

Defendants.

Case No. 2:22-cv-00381-CDS-NJK

ORDER

I. DISCUSSION

On June 14, 2022, this Court denied Plaintiff's application to proceed *in forma pauperis*, holding that because he had "accumulated at least four strikes and ha[d] failed to satisfy the imminent-danger exception, he must prepay the \$402.00 filing fee in full to proceed with this action." ECF No. 4 at 3. As the Court explained, Plaintiff failed to show that he was "under imminent danger of serious physical injury" when he filed this lawsuit because the Complaint rested entirely on the allegation that Defendants had repeatedly canceled Muslim Friday prayer services at High Desert State Prison. *Id.* (quoting 28 U.S.C. § 1915(g)). Accordingly, the Court gave Plaintiff thirty days to pay the filing fee, noting that if he failed to do so, this action would be "dismissed without prejudice." *Id.* at 4.

On July 11, 2022, Plaintiff moved for reconsideration of the denial of his application to proceed *in forma pauperis*. ECF No. 5. Plaintiff offers no basis to reconsider the Court's conclusion that he incurred at least four strikes before filing this action. For example, Plaintiff argues that his strikes should be disregarded because the Attorney General's Office and the "Nevada courts" conspire to "protect their subordinates from liability." *Id.* at 6. This unsupported allegation does not show that the Court erred in calculating Plaintiff's strikes. More substantively, Plaintiff contends that he satisfied the imminent-danger exception based on several incidents that took place approximately four months after he filed the Complaint. *Id.* at 3-7.

16

1 A motion to reconsider must set forth “some valid reason why the court should
2 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to
3 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183
4 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented with newly
5 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or
6 (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255,
7 1263 (9th Cir. 1993). “A motion for reconsideration is not an avenue to re-litigate the same issues
8 and arguments upon which the court already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp.
9 2d 1280, 1288 (D. Nev. 2005).

10 The Court denies Plaintiff’s motion for reconsideration. ECF No. 5. Because Plaintiff
11 incurred at least four strikes before filing this action, he may not proceed *in forma pauperis* unless
12 he was “under imminent danger of serious physical injury” at the time he filed the Complaint. 28
13 U.S.C. § 1915(g). In applying the imminent-danger exception, courts look to the conditions the
14 “prisoner faced at the time the complaint was filed, not at some earlier or later time.” *Andrews v.*
15 *Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007). Thus, “[c]ourts have rejected attempts by
16 prisoners to satisfy the ‘imminent danger’ requirement of [§] 1915(g) by raising new allegations
17 of events that occurred after the prisoner’s original complaint was filed.” *Lewis v. Dep’t of Soc. &*
18 *Health Servs.*, No. 21-cv-1568, 2022 WL 370158, at *2 (W.D. Wash. Feb. 8, 2022) (collecting
19 cases); *see also Brownlee v. Omosale*, No. 20-cv-01580, 2021 WL 275377, at *2 (N.D. Cal. Jan. 27,
20 2021) (“Here, the complaint was filed in March 2020 and the alleged attack occurred months
21 later, in July. Therefore, [plaintiff] has not shown he was in imminent danger of serious physical
22 injury at the time of filing.”).

23 Plaintiff filed the Complaint in this action on March 1, 2022. ECF No. 1-1. Accordingly,
24 the question is whether, as of that date, Plaintiff was “under imminent danger of serious physical
25 injury.” 28 U.S.C. § 1915(g). In his motion for reconsideration, Plaintiff alleges that on April 25,
26 2022, a judge in a different action permitted him to attend Muslim Friday prayer services. ECF
27 No. 5 at 4. Two months later, on June 21, 2022, Plaintiff “lined up to attend” one such service. *Id.*
28 At this point, prison officials—having “discovered” the Complaint in the present action—

1 frivolous counts as a dismissal and a strike for purposes of § 1915(g).” (internal quotation marks
2 and citations omitted)), *adopted by* 2021 WL 1401836 (E.D. Cal. Apr. 14, 2021).²

3 Plaintiff incurred a fourth strike on May 9, 2018, when a court in this district dismissed
4 one of his civil rights actions “with prejudice because it [was] frivolous and cannot be cured by
5 amendment.” *Bailey v. Herndon*, No. 16-cv-02595, 2018 WL 2136356, at *1 (D. Nev. May 9, 2018).

6 Because Plaintiff accumulated four strikes before filing this action, he may not proceed *in*
7 *forma pauperis* unless he was “under imminent danger of serious physical injury” at the time he
8 filed the Complaint. 28 U.S.C. § 1915(g); *see also Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir.
9 2007) (holding that availability of imminent-danger exception “turns on the conditions a
10 prisoner faced at the time the complaint was filed, not at some earlier or later time”). The
11 imminent-danger exception “functions as a limited safety valve for a prisoner who has exhausted
12 his three strikes but nevertheless faces imminent danger [of serious physical injury] stemming
13 from the violations of law alleged in his complaint.” *Ray v. Lara*, 31 F.4th 692, 701 (9th Cir. 2022).

14 Plaintiff has not satisfied the imminent-danger exception here. The Complaint alleges
15 that Defendants violated the First Amendment and the Religious Land Use and Institutionalized
16 Persons Act by repeatedly cancelling Muslim Friday prayer services. ECF No. 1-1 at 3-10.
17 Nothing in the Complaint suggests that Plaintiff was “under imminent danger of serious
18 physical injury” when he filed this lawsuit. 28 U.S.C. § 1915(g). Because Plaintiff has
19 accumulated at least four strikes and has failed to satisfy the imminent-danger exception, he
20 must prepay the \$402.00 filing fee in full to proceed with this action.

21 II. CONCLUSION

22 For the foregoing reasons, it is ordered that Plaintiff’s application to proceed *in forma*
23 *pauperis* (ECF No. 1) is denied.

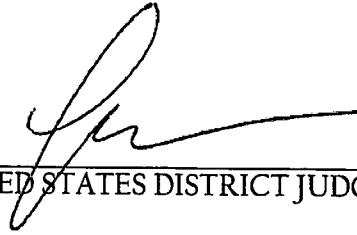
24
25
26 ² *See also Morris v. Petersen*, No. 12-cv-02480, 2015 WL 4776088, at *2 (N.D. Cal. Aug. 13, 2015)
27 (assessing strike where “district court certified that the appeal was not taken in good faith,” and “[t]he
28 Ninth Circuit agreed, required [plaintiff] to pay the full filing fee, and then dismissed the appeal when he
failed to do so”); *Murillo v. McBride*, No. 11-cv-1560, 2014 WL 2858529, at *3 (S.D. Cal. June 23, 2014)
(assessing strike where district court “determined that the appeal was not filed in good faith,” and “the
Ninth Circuit agreed that [p]laintiff’s appeal was not taken in good faith,” “denied [p]laintiff’s motion to
proceed IFP on appeal,” and then dismissed the appeal “for failing to prosecute” when plaintiff “failed to
pay the filing fee”).

1 It is further ordered that this action will be dismissed without prejudice unless Plaintiff
2 pays the \$402.00 filing fee in full within thirty (30) days of entry of this order.

3 It is further ordered that the Clerk of the Court shall send Plaintiff two copies of this
4 order. Plaintiff shall make the necessary arrangements to have one copy of this order attached to
5 the check paying the filing fee.

6 It is further ordered that the Clerk of the Court shall retain the Complaint (ECF Nos. 1-1,
7 1-2) but will not file it at this time.

8 DATED this 14th day of June, 2022.

9
10 
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

From: cmecf@nvd.uscourts.gov
Sent: Tuesday, May 9, 2023 2:19 PM
To: cmecfhelpdesk@nvd.uscourts.gov
Subject: Activity in Case 2:20-cv-01709-KJD-VCF Bailey v. N.D.O.C. et al Order

Med
Exhibit
F's

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** There is no charge for viewing opinions.

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 5/9/2023 at 2:18 PM PDT and filed on 5/9/2023

Case Name: Bailey v. N.D.O.C. et al

Case Number: 2:20-cv-01709-KJD-VCF

Filer:

WARNING: CASE CLOSED on 05/09/2023

Document Number: 53

Docket Text:

ORDER. IT IS ORDERED that [49] Plaintiff's Rule 60(b) Motion for Reconsideration is **DENIED**. Signed by Judge Kent J. Dawson on 5/9/2023. (Copies have been distributed pursuant to the NEF - JQC)

2:20-cv-01709-KJD-VCF Notice has been electronically mailed to:

HDSP Law Library HDSP_LawLibrary@doc.nv.gov

Samuel Pezone, Jr spezone@ag.nv.gov, ajbeckett@ag.nv.gov, dresch@ag.nv.gov

2:20-cv-01709-KJD-VCF Notice has been delivered by other means to:

Bryan

Director of Nursing

James McLowe

22

Michael Minev

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1101333072 [Date=5/9/2023] [FileNumber=11109655-0
] [405809ec916df7186df3d436cad80230251d5c39d9c3f839e3c18c53d94938f5058
30e633c4475eb7a6caeb0b54867a289ec728649a1a6c6303de129dabeb341]]

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANTHONY BAILEY,

Plaintiff,

Case No. 2:20-cv-01709-KJD-VCF

ORDER

v.

NDOC, et al.,

Defendants.

Presently before the Court is Plaintiff's Rule 60(b)(1) Motion for Reconsideration (#49). Defendant responded in opposition (#50) to which Plaintiff replied (#51).

I. Factual and Procedural Background

Plaintiff ("Bailey") is an inmate at High Desert State Prison in Nevada. He brought suit against multiple Defendants, asserting civil rights claims arising from 42 U.S.C. § 1983. On June 3, 2021, the Court issued a screening order dismissing many claims and letting others proceed (#10). The Court also granted summary judgment and issued a judgment in favor of Gregory Martin ("Martin") and against Bailey. (#47/48).

Bailey now moves the Court to reconsider the screening order, the order denying entry of default, and the order granting summary judgment in favor of Martin. The government, representing only Martin, opposes the motion and argues it is untimely and does not present any new evidence or argument to support reconsideration. (#50).

II. Legal Standard

1. **Rule 60(b)**

A motion for reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). This motion is brought under either Rule 59(e) or

1 Rule 60(b) of the Federal Rules of Civil Procedure (“Rule”). See United States v. Martin, 226
2 F.3d 1042, 1048 n.8 (9th Cir. 2000).

3 A motion for reconsideration should not merely present arguments previously raised; that is,
4 a motion for reconsideration is not a vehicle permitting the unsuccessful party to reiterate
5 arguments previously presented. See Merozoite v. Thorp, 52 F.3d 252, 255 (9th Cir. 1995);
6 Beentjes v. Placer County Air Pollution Control District, 254 F.Supp.2d 1159, at 1161 (E.D. Cal.
7 2003); Khan v. Fasano, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (“A party cannot have
8 relief under this rule merely because he or she is unhappy with the judgment.”).

9 A Rule 60(b) motion “must be made within a reasonable time...no more than a year after the
10 entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

11 **2. Screening Order**

12 Federal courts must conduct a preliminary screening in any case in which a prisoner seeks
13 redress from a governmental entity or officer or employee of a governmental entity. See 28
14 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any
15 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or
16 seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §
17 1915A(b)(1), (2).

18 Dismissal of a complaint for failure to state a claim upon which relief can be granted is
19 provided for in Rule 12(b)(6), and the Court applies the same standard under § 1915 when
20 reviewing the adequacy of a complaint or an amended complaint.

21 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See Chappel v. Lab
22 Corp. of America, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is
23 proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that
24 would entitle him or her to relief. See Morley v. Walker, 175 F.3d 756, 759 (9th Cir. 1999). In
25 making this determination, the court takes as true all the allegations of material fact stated in the
26 complaint, and the Court construes them in the light most favorable to the plaintiff. See Warshaw
27 v. Xoma Corp., 74 F.3d 955, 957 (9th Cir. 1996).

28 However, a reviewing court should “begin by identifying pleadings [allegations] that,

1 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
2 Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the
3 framework of a complaint, they must be supported with factual allegations.” Id. “When there are
4 well-pleaded factual allegations, a court should assume their veracity and then determine
5 whether they plausibly give rise to an entitlement to relief.” Id. “Determining whether a
6 complaint states a plausible claim for relief...[is] a context-specific task that requires the
7 reviewing court to draw on its judicial experience and common sense.” Id.

8 All or part of a complaint filed by a prisoner may therefore be dismissed sua sponte if the
9 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
10 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit
11 or claims of infringement of a legal interest which clearly does not exist), as well as claims based
12 on fanciful factual allegations (e.g., fantastic or delusional scenarios). See Nietzsche v. Williams,
13 490 U.S. 319, 327-28 (1989); see also McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

14 III. Analysis

15 Bailey argues that the Court’s decisions were based on mistake, inadvertence, surprise or
16 excusable neglect. (#49, at 7). Bailey’s request to reconsider the screening order is untimely. The
17 Federal Rules of Civil Procedure mandate that a Rule 60(b) motion be filed within one year of
18 the order at issue. Here, the screening order was filed on June 3, 2021. (#10). The present motion
19 was filed on February 16, 2023, and therefore this motion in filed too late.

20 Regardless, the Court properly screened Bailey’s claims. Courts are tasked with examining
21 and analyzing the alleged wrongdoings that come before them. Courts are also bound by certain
22 procedural and substantive rules. Allegations made by a pro se complainant are held to less
23 stringent standards than formal pleadings drafted by lawyers, but the complainant must still
24 identify some evidence or make legitimate claims against individuals who are not immune from
25 the suit based on the infrastructure established by the Constitution and Congress. Mere legal
26 conclusions or fantastic factual allegations that are not supported by facts or evidence cannot be
27 allowed to move forward as it congests the judicial system and places legitimate claims at the
28 back. Courts cannot just take a plaintiff’s “word for it,” as it would corrupt the system and

1 disable the adversarial framework that has been carefully designed.

2 The Court notes that the system is not perfect, and prisoners do have genuine and proper
3 claims for courts to redress, but these claims must be based on more than just allegations or
4 conclusions without anything to support them. The Court considered Bailey's grievances against
5 the Defendants and found that legally, only some claims were able to continue, and others were
6 dismissed.

7 Bailey insists throughout his motion that there is some type of government conspiracy
8 against him. He reargues the issues in his original complaint and does not present additional
9 evidence to support his Rule 60(b) motion. In addition to his motion to reconsider the screening
10 order being untimely, Bailey has not met the legal standard required of a Rule 60(b) motion.

11 The Court also carefully considered Martin's motion for summary judgment and granted it
12 according to the legal standard. Bailey did not overcome the evidentiary threshold required to
13 survive summary judgment. Again, Bailey has not presented anything new for the Court to
14 reconsider that motion. He asserts that the Court committed fraud and that the Court's orders
15 deprived him of his constitutional rights, and that the Court colluded with the Attorney General's
16 office to do so. The Court assures Bailey that this is not the case. Without more evidence to
17 support his conclusions, the Court will not reconsider the screening order or the motion for
18 summary judgment.

19 IV. Conclusion

20 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Rule 60(b) Motion for
21 Reconsideration (#49) is **DENIED**.

22 Dated this 9th day of May, 2023.



Kent J. Dawson
United States District Judge

Exhibits
7/13

From: cmecf@nvd.uscourts.gov
Sent: Wednesday, May 24, 2023 1:34 PM
To: cmecfhelpdesk@nvd.uscourts.gov
Subject: Activity in Case 2:20-cv-01709-KJD-VCF Bailey v. N.D.O.C. et al Notice of Appeal

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 5/24/2023 at 1:33 PM PDT and filed on 5/24/2023

Case Name: Bailey v. N.D.O.C. et al
Case Number: 2:20-cv-01709-KJD-VCF
Filer: Anthony Bailey

WARNING: CASE CLOSED on 05/09/2023

Document Number: 54

Docket Text:

NOTICE OF APPEAL as to ECF No. [52] Order Dismissing Case, by Plaintiff Anthony Bailey. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. Filing Fee NOT paid.
(Attachments: # (1) Copy of PACER Docket Sheet for Plaintiff) (DRM)

2:20-cv-01709-KJD-VCF Notice has been electronically mailed to:

HDSP Law Library HDSP_LawLibrary@doc.nv.gov

Samuel Pezone, Jr spezone@ag.nv.gov, ajbeckett@ag.nv.gov, dresch@ag.nv.gov

2:20-cv-01709-KJD-VCF Notice has been delivered by other means to:

Bryan

Director of Nursing

Anthony Bailey #36192
 PO Box 650
 Indian Springs, Nevada 89070

Appellant - Pro Se

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA
 (SO. DISTRICT)

ANTHONY BAILEY,
 Appellant,

vs.

N.D.O.C. et al.,
 Appellees.

Case No. 2:20-CV-01709-KJD-VCF

NOTICE OF APPEAL
 PURSUANT TO TITLE 28
 1915(A) et c.

COMES NOW, Anthony Bailey, Appellant, Pro Se Appeals to the 9th Circuit Court of Appeals, where: 1) The Appellant is being retaliated against by federal judges for discovering, an Eighth Judicial District Court Retired Judge Charles Thompson falsify imprisoned the Appellant for exercising his First Amendment Right (self-representations) and the Implied Acquittal (4-29-14, Dist. 20 of the Eighth Judicial District Court) while Judge Dawson and this Appellate Court, has not presented any prior certified court orders, the 9th Circuit Court of Appeals Justices declared in Hunter, 98-15212, and Gundersen et al., that were dismissed by

the 9th Circuit Court of Appeal, by labeling the mentioned prior Haines v. Kerner litigation as frivolous, malicious or failed to state a claim upon which relief could be granted, yet, due to there not being such ORDERS, the Dawson Court in the above-mentioned case number, causes the Appellants Civil Litigation fails by misapplication of the law and during its screening order; Abuse of Discretion;

a). Dismissed the Director of Nursing from the Complaint, because the Director of Nursing was held liable under the well-established Administrative Regulations 600 series; see Exh. A (600) (M) for the wrongs of Defendant Boyan for failure to correct. AR 600 (5)

b). The Dawson Court misapplied Rule 4, upon Defendant Boyan's attorney, Hervey Kim of the Attorney General Office (Not Peace Officer), filed Notice of Under Seal Submission 9-22-21, for the purpose avoiding its client Defendant Boyan from the discovery phase of litigation (preventing the Appellant anti-depressant's Elavil for pain, that dried up the Appellants reproductive system nor was the Appellant provided Notice of the side effects of the Elavil, yet, continued to provide Elavil, after removed from the medical shelves; see Exhibit A of the Plaintiff's Opposition To Motion For Summary Judgment;

Note: Once Kim made the decision to operate

on behalf of Defendant Bryan, using the lower court to conceal Defendant Bryan's last known address, had previously accepted service on Defendant Bryan, prior to providing the lower court whereabouts of Defendant Bryan.

c. The lower court also Abused Its Discretion, when issuing its Order #10, On the ___ day of ___, 202__ (Screening Order), that, give ~~No~~ Not ICE Defendant Bryan allegedly had not been served under Rule 4, to sabotage the Appellants Rule 55 Default Judgment, to ~~cover up~~ and ensure the Appellants' appeal is, labeled as an appeal taken in bad faith, an abridgment relied upon by lower court judges in the Appellants' present civil litigations in case nos. 2:22-cv-00381-CPS-AMK; 2:22-cv-00386-AMK () and 2:19-cv-01725-AMK-CJ. ^(admitted) ^(2:21-6389) ^(supported with direct evidence) ~~eschewed~~ to ensure economical means are not secured through erroneous misapplications of Title 28 § 1915(g), through non-existing Orders of this Appeal Court, that, satisfies the Title 28 § 1915(g) disregarding the Appellants Civil Complaints were supported with sworn-authenticated direct evidence (Rule 901 (1) of Fed. R. Evidence) due to the 9th Circuit Court of Appeals expired ORDER (12-80059) still, relied upon secretly to avoid providing fair-judicial review by invoking subsection (3) of Title 28 § 1915, to which

Appellant from receiving the procedural safeguard afforded in Title 28 § 1915 (4) ;

c) Appellant believes further it was erroneous of the lower court to dismiss the Appellant's Default Judgment pleading with prejudice, where in its Orders #47 and #48, it served Defendant Bryan through another subordinate of the Attorney Office, Samuel Bezone Jr., 3-29-23, as proof, that says:

"there would be no need to have Defendant Bryan Noticed of Documents 47 and 48 of the lower court, if, the judicial record does not reflect, Defendant Bryan was not served prior to the court's screening Order; see Exhibit B Notices of Orders 47 and 48

d) Rather, the Dawson Court held both Defendants Bryan and Martin liable in its screening order, 6-3-21, then, invoke Rule 4, alleging the Appellant had not served Defendant Bryan, so, economical means would not able the Appellant's desire to hire an attorney, by the dismissal of Rule 55 pleading, then dismissed under with prejudice doctrine, with the ill-spirit of covering up, its misapplication of Rule 4, to relieve Defendant Bryan from being responsive to any of alleged Counts of Civil Rights Complaint, so, required being an employee of M.D.C./High Desert State Prison, a political subdivision of the State of Nevada, it was required of the Attorney General Office to receive and serve on behalf of Defendant Bryan;

- e). It was the decision-making of the Attorney General Office, after fulfilling the Rule 4 doctrine (acceptance of service) (Defendant's Bryan, Martin, Director of Nursing 1 and 2 as well as DOE), is what allows Henry King of the Attorney General Office, to Notify the court, it has chosen to keep Defendant Bryan from facing the allegations and surround declarations and direct evidences that could draw inference, the Appellant was subjected to a modern day extortion, through long-term use of an anti-depressant (obscure approval from a Mental Health Doctor at the prison) (Elavil) provided by Defendant Bryan, even after, the drug was removed from the shelves;
- f). That, the lower court knew or should know, it was an abuse of discretion to dismiss DOE's, Director of Nursing 1 and 2, were to be held liable when the DOE's failed to correct Defendant's wrongs in the course of supervisory responsibilities... wholeheartedly of a constitutional violation through A.R. 140 et seq. grievance procedure and 160 series, that secures the liabilities of the Director of Nursing for failing to correct Defendant Bryan and Martin wrongs. see (60621) and its direct evidence) also see NOTIS and Williams v. Smith, 781 F.2d 319 323-24 (1986).
- g). That such, deprives the Appeal Court from rubber-stamping Rule 55 pleadings, to protect a state employee, Defendant Bryan provided medications Elavil long

team, to a state prison, the Appellant, who now, can not reproduce children, while the lower court, request of this court to declare the Appellant, Non-fertile, whose held to reproductive active system, prior to Defendant Bayan's passions ensuring Neph-Care, the health provider, provides: annual kick-backs for the cheapest medical care provided to the Appellant and those similarly situated; DEFENDANT MARTIN

h). Also, the lower court's Order demonstrates, upon granting Summary Judgment on behalf of Defendant Martin, the lower court arbitrarily and capriciously re-invents this Appellant's self (direct evidence) and genuine material issue of disputed fact, by placing upon its public judicial record "Upon the Appellant authoring a medical kite, 11-12-19, he was saw and received medical care the same date, rather than, (57) fifty-seven days later for spider bite, even after, Defendant's Martin's Declaration (Exhibit N of the Plaintiff's Opposition) establishing, it only concerned itself of chronic care, rather than, the pains and suffering of an untreated spider bite; see Exhs. E and N of Plaintiff's Opposition To Defendant Martin's Motion For Summary Judgment)

i). That, prior to Summary Judgment proceedings, the Appellant provided the lower court judicial notice, his medical records had been scrubbed by the Defendants, to hide the in-adequate actual medical care the Appellant was receiving

ing as a state prisoner,

i). That, the parent of the lower courts abuse of discretion and bias actives as a judicial officer, allowed Dawn Jensen of the law firm, the attorney general office, seal Exhibits E, F, and G, evidences scrubbed out of the Appellant's medical file and completely made under to ensure the Appellant remain sleep on his actual medications and genuine material facts supporting the sworn allegations contained in Civil Rights Complaint; see FR Civ. Rule 12(f) and 56


j). That, the lower court misapplied Booth v. Churner, to a Sapp v. Kimbrell, 623 F.3d 813, 823 (2010) Woodford v. Ngo, 548 U.S. 81, 93 (2006).

k). Surely, should Equal Protection of Law remain true, the Appellant's lengthy Notice Appeal, the allegations herein, Exhibit A 60b(1), along with the fact, NO COURT IN THE UNITED STATES OF AMERICA, has (3) three ORDERS, within the judicial record of Civil Litigation, that states beyond the Appellant lack paying fees, does not support any court, invoking Title 28 § 1915(g), rather, the activities of this case and those mentioned earlier, suggest many, many things in modern America, especially, a clear uneducated view, the Appellant's procedural afforded safeguards (Title 28 § 1915(f)) are being violated because the Appellant lacks the economical means to pay filing fees,

contrary to the Title 28 § 1915(g) doctrine, relied upon by the judicial body of government, to silence the Appellants' litigation, in retaliation for self representations and prevailing on an implied acquittal verdict, (see state law entitlement NR 5174.085(3), I.O.C. and Letter of Intervention attached) in his criminal proceedings, 4-29-14, Dept. 20, case NO. 253437 of the Eighth Judicial District Court entitles fair and unbias Appeal proceedings requiring repose and remand.

Respectfully Submitted,

note: 5-24-23


Anthony Bailey, Appellant

CERTIFICATE OF SERVICE

I, hereby certify, that, On the 24 day of May, 2023, I, E-filed my NOTICE OF APPEAL and Exhibits to the following:

<casehelpdesk@nrd.uscourts.gov>

ANTHONY BAILEY

ANTHONY BAILEY - E-Signature

Anthony Bailey
P.O. Box 650-36192
Indian Springs, Nevada 89070
Plaintiff - In Person

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY BAILEY,
Plaintiff,

VS -

N.D.O.L. et al.,
Defendants.

Case No. 2:20-cv-01709-KJD-VCF

606X1) MOTION
(Failing to provide notice
required by Rule 45(c)(4) and
Title 28 § 1915 et seq.)

COMES NOW, Anthony Bailey, the Plaintiff,
and moves this court in fairness and the
provisions made available to this Plaintiff un-
der the United States Constitution, laws and the
Fed. R. Civ. P., where during the court's screen-
ing order, Document # 10, the court did not give
the Plaintiff or the judicial record, Notice, Defen-
dant Gregory Bryan (ECF No. 10 at 7-11) had not
been served, was the inadvertence of the court,
due to the court's own Order, allowing the
attorney general office, being able to conceal

this Plaintiff did not serve Defendant Bayan, only after the court's screening of allowing the Plaintiff to proceed against Bayan. see Document 10 pg. 16 L. 14 thru 16; pg. 16 L. 17 thru 19 see also Title 28 § 145A (b)(1)(2).

It is believed, during the screening procedure, based on filing date, the Plaintiff was entitled to Notice of Defendant Bayan was not allegedly served, long before Rule 55 was proceeding, rather than, providing the Plaintiff Equal Protection of The Law (the court, knowing the Attorney General Office was representing Defendant Bayan, upon their request to seal Defendant Bayan's address, still there was no served Notice, Gregory Bayan, Defendant was no served, contrary to this court's Document 48, in which, reads; (Required during screening of complaint).

Docket Text:

JUDGMENT in favor of Martin against Anthony Bailey . . .

2:20-cv-01709-KJD-VCF Notice has been electronically mailed to: ~~Samuel Pozner, Jr.~~ (the attorney general Deputy, whom has secretly represents Defendant Bayan and shown, when the A.G.'s sought of the court, Bayan's address be sealed, in the appearance the Defendant could not be found, for tactic that was permitted the court, in order, "would not be subjected to the discovery phase of this litigation". . .

Note: Henry Kim of the A.G.'s Office, clerk, was not obligated to seal Defendant Bryan's Address, unless, by first part Bryan hired the A.G.'s to seal his address or subpoenaed the A.G.'s Office of service, representing and pleading before the court, which accepted responsibility for any error. see Doc # 47 could be the court wishes not the Defendant service and heral representation of Defendant.

Bryan, prior to being able to request of the court to seal Defendant Bryan's address, explaining why Document # 48, Notice has been delivered by other means to: also see Document # 47

Bryan

Director of Nursing see Exhibit B Doc # 48 and 47.

Thus, because the attorney general's office, chose not to respond to the Plaintiff's Civil Right Complaint, after A.G.'s Office acceptance of service and representation, deprives the court of overlooking, UPON THE ATTORNEY GENERAL OF FICE having FILED THEIR REQUEST TO SEAL THE DEFENDANT'S BRYAN'S ADDRESS, COULD ONLY HAVE BEEN LEGALLY DONE BY ATTORNEY DE RECORD, ONLY AS WELL, UNLESS DEFENDANT BRYAN, PROSE, sought the SEALING OF ADDRESS, the court's explicit communications.

Besides, it not having of the court's clerk to serve upon the attorney general office subpoena, Samuel Perazavala. "This advice and legal tactics, not to subject their client to the discovery phase of the litigation, for damage control, while claiming Defendant Bryan could be found, NOW, being provided NOTICE in favor of Martins, it was an Order designed by the court, upon depriving the Plaintiff the relief sought from the Fed. R. Civ. R. (Rule 55 et seq) by overlooking, "The A.G.'s

Courts Discretion During Screening Upon Dismissing Allegations of Violations of Prison Procedures, Treatment of Inmates or Grievances or The Conduct Forming The Basis Of The Eighth Amendment Claims :

Surely, this court and the human factor entitled the Plaintiff sought relief, if, the Plaintiff can show the courts mistake, inadvertence, surprise or excusable neglect. 606(1) of Fed.R.Cv.P.

Here, it appears the screening court, further in its inadvertence disregarded (A.R. 740.08(2)(B)) Operational Procedure (shall be responded to by a charging nurse or designee of the Director of Nursing (pg. 10 of 30); First level medical/dental issues (DON's I or II.) and (740.09(E) The Medical Director for medical. . . should be responded within 60) calendar days, as it, was required of the charging nurse etc. and DON's I or II (to provide 45 days reports ences according to (OP. 740.08 (2) pg. 12 of 30 and O.P. 740.09(5) (pg. 13 of 30).

Again, Exhibits E^s of the Plaintiff Opposition To Defendants Motion For Summary Judgment demonstrates the Plaintiff appealed to the following level, when those DCS were provided knowledge 1978/1985 conspiracy was committed and did nothing about it, was a mistake of the screening court to Dismiss Director of Nursing and/or John and James Jones see Title 428/1986

Case 2:20-cv-01709-KJD-VCF Document 54 Filed 05/24/23 Page 14 of 22

except from the Plaintiff's medical records without the consent of the Plaintiff or conveyed by the Plaintiff to the court and Plaintiff and especially SEAL Exh. - E.F.G. to maintain a typical appearance and pay for the cost of the Plaintiff's health care, as state prisoners, of the Defendants for a lack of professional dignity

towards the Plaintiff's health and life, is/are possibly a mistake, especially, Minors (Defendants) DOES were relieved of liabilities that entitled the Plaintiff to equal protection of the law and the policies and procedures as well as well-established Administrative Regulations prohibiting immunity and the misapplication of

Booth & Chance, - US - (), where page 18 of 30 of the Plaintiff Opposition To Motion For Summary Judgment (Exhibit 1) (both sides of the Exhibits) pg. 46 "once A.W.F. Deeser chose not to acknowledge the Plaintiff's signature (Log Number 2006-30-48637) and the courts refusal to acknowledge Plaintiff's 11-25-19 grievance concerning spider bite, the Plaintiff had not received any response until 5-15-20 (far beyond 45 calendar day afforded to the Defendants) (4) four months and some days total. see Exhibit 1 pg. 43 of the Plaintiff Opposition To Motion For Summary Judgment; A.R. 740.03 (8)(B) states:

"The inmate may appeal to the next grievance level if a response is overdue."


Moreover, this court refused to acknowledge the Defendant Martin had less actual jurisdiction over the 11-25-19 informal grievance, where this response did not provide the Plaintiff the 45 calendar days response until 5-15-20, see pg. 43 informal grievance:

~~Case 2:20-cv-01709-KJD-VCF Document 49 Filed 02/15/23 Page 11 of 17~~
 was provided NOTICE of the court fraud upon the record (Docs 47 and 48) denying the Plaintiff's Default Judgment Proceedings (for an alleged lack of service), thereby completely revealing in its Summary Judgment that Defendant Bryan had long been served through the U.S. Office under explicit communications, while the court repeatedly ~~was~~ ^{was} under and the exhaustion exception, entitled the Plaintiff to ~~cont.~~

to a trial date and the entry of Defendant's Bryan's Default Judgment, where the courts Document #48 give proof of Defendant Bryan being served ~~not~~ had the courts screening order provided Notice prior to Summary Judgment, Defendant Bryan had not been served pursuant to Rule 45 et seq. entitles actual relief from Document #46 and 47 as a matter of justice see Title 28 § 1915 et seq. as well.

RESPECTFULLY SUBMITTED,

Date: 2-15-23


 Anthony Batley - Plaintiff

CERTIFICATE OF SERVICE

I, Anthony Batley, hereby certify, that, On the 15 day of February, 2023, I E-Filed my 60(b)(2) Motion and Exhibits to the following:

< casefiled.uscourts.gov >

Date: 2-15-23

ANTHONY BATLEY
 E-FILE SIGNATURE

cont.

to provide NOTICE (a requirement set forth in Title 28 § 1915 et seq.) had not, the Defendant Bryan be served, a fallacy imposed upon the Plaintiff's litigation, to ensure the Defendant Gregory Bryan will be held not liable, where Doc's 47 and 48 openly reveals, there would be need to provide Bryan Notice of Doc's 47 and 48, if, there was no prior acceptance of

File 55551(1)

Finally, Exhibit E of the Plaintiff Opposition To Defendant Motion For Summary Judgment was the evidence that showed a genuine issue of material facts, that entitled the Plaintiff to a trial. see Exhibit E (kite requesting to be promptly seen by the Defendants), contrary to Defendant Motion's Declaration (the Plaintiff was seen 1-27-2020 but, allegedly did not report a spider bite...acknowledging 11-12-19 the Plaintiff's Exhibit

E ...

AARON D. FORD
Attorney General
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
(702) 486-3195 (phone)
(702) 486-3773 (fax)
Email: drjensen@ag.nv.gov

Attorneys for Defendant
Gregory Martin

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY BAILEY,

Plaintiff,

v.

NDOC, *et al.*,

Defendants.

Case No. 2:20-cv-01709-KJD-VCF

**NOTICE OF UNDER SEAL
SUBMISSION OF EXHIBITS C, E, F,
AND G IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Defendant, Gregory Martin, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Dawn R. Jensen, Deputy Attorney General, of the State of Nevada, Office of the Attorney General, hereby gives notice that Exhibits C, E, F, and G in support of Defendant's Motion for Summary Judgment have been filed under seal.

DATED this 21st day of July, 2022.

AARON D. FORD
Attorney General

By: /s/ Dawn R. Jensen
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General

Attorneys for Defendant

Activity in Case 2:20-cv-01709-KJD-VCF Bailey v. N.D.O.C. et al Judgment

cmecf@nvd.uscourts.gov <cmecf@nvd.uscourts.gov>

Fri 2/3/2023 2:08 PM

To: cmecfhelpdesk@nvd.uscourts.gov <cmecfhelpdesk@nvd.uscourts.gov>

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 2/3/2023 at 2:06 PM PST and filed on 2/3/2023

Case Name: Bailey v. N.D.O.C. et al

Case Number: 2:20-cv-01709-KJD-VCF

Filer:

Document Number: 48

Docket Text:

JUDGMENT in favor of Martin against Anthony Bailey. Signed by Clerk of Court Debra K. Kempf on 2/3/2023. (Copies have been distributed pursuant to the NEF - LOE)

2:20-cv-01709-KJD-VCF Notice has been electronically mailed to:

HDSP Law Library HDSP_LawLibrary@doc.nv.gov

Samuel Pezone, Jr spezone@ag.nv.gov, cknight@ag.nv.gov, cmackerl@ag.nv.gov, dresch@ag.nv.gov, jnbriones@ag.nv.gov

2:20-cv-01709-KJD-VCF Notice has been delivered by other means to:

Bryan

Director of Nursing

Exhibit
85

48

Electronically Filed
12/17/2014 07:29:05 AM

Alan L. Shuman
CLERK OF THE COURT

JOC

36192

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY DEWANE BAILEY
#0683227

Defendant.

CASE NO. C253437

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 2, 3, 4 & 5 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165, COUNTS 6, 7 & 8 – POSSESSION OR SALE OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION TO ESTABLISH FALSE STATUS OR IDENTITY (Category E Felony) in violation of NRS 205.465; COUNT 9 - COERCION (Category B Felony) in violation of NRS 207.190; and COUNT 10 - BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 2 – SEXUAL ASSAULT WITHOUT USE OF A

EX-105
10 copies
7

216

11

1 DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366;
 2 COUNTS 6 and 8 – POSSESSION OR SALE OF DOCUMENT OR PERSONAL
 3 IDENTIFYING INFORMATION TO ESTABLISH FALSE STATUS OR IDENTITY
 4 (Category E Felony) in violation of NRS 205.465, 193.130; and COUNT 9 - COERCION
 5 (Misdemeanor) in violation of NRS 207.190; thereafter, on the 15TH day of December,
 6 2014, the Defendant was present in court for sentencing as Pro Se, and good cause
 7 appearing,
 8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses as set forth in
 10 the Jury's verdict with COUNT 2 under the LARGE HABITUAL Criminal Statute and, in
 11 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
 12 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
 13 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
 14

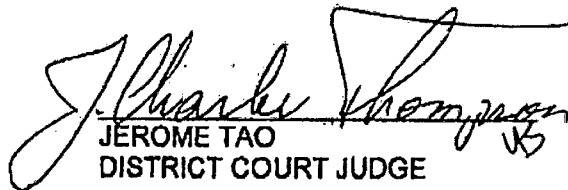
15 **COUNT 2 – LIFE with parole after TEN (10) YEARS; COUNT 6 - to a MAXIMUM of**
 16 **FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16)**
 17 **MONTHS, CONSECUTIVE to COUNT 2; COUNT 8 - to a MAXIMUM of FORTY-EIGHT**
 18 **(48) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS,**
 19 **CONCURRENT with COUNT 6; COUNT 9 – SIX (6) MONTHS in the Clark County**
 20 **Detention Center (CCDC), CONCURRENT with COUNT 2; with TWO THOUSAND**
 21 **NINETY-SIX (2,096) DAYS credit for time served. COUNTS 1, 3, 4, 5, 7, & 10 – NOT**
 22 **GUILTY**

23
 24
 25 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
 26 is imposed to commence upon release from any term of imprisonment, probation or
 27 parole. In addition, before the Defendant is eligible for parole, a panel consisting of
 28

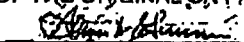
1 the Administrator of the Mental Health and Development Services of the Department
2 of Human Resources or his designee; the Director of the Department of corrections or
3 his designee; and a psychologist licensed to practice in this state; or a psychiatrist
4 licensed to practice medicine in Nevada must certify that the Defendant does not
5 represent a high risk to re-offend based on current accepted standards of assessment.
6

7 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
8 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
9 release from custody.
10

11 DATED: December 16, 2014

12
13 
14 JEROME TAO
15 DISTRICT COURT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

3
S:\Forms\JC-Jury 4-CV\12/16/2014

A
13

48

Steve Sisolak
Governor

Charles Daniels
Director

Kirk Widmar
Offender Management
Administrator



Northern Administration
5500 Snyder Ave.
Carson City, NV 89701
(775) 977-5500

Southern Administration
3955 W. Russell Rd.
Las Vegas, NV 89118
(725) 216-6000

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
INDIAN SPRINGS NV 89070
725-216-6789

Date: August 19, 2022

To: Clerk Of The Court

From: SMITH, ROMAIN
CORRECTIONAL CASE WORK SPEC 2

SUBJECT:	NAME:	BAILEY, ANTHONY	NDOC#	0000036192
	AKA:	BAILEY, ANTHONY DEWANE		
	DOB:	07/31/1963	SSN#	530-72-6593
	FBI ID:	235061X3		

Sentence Structure

LVL	S	CASE#	CNT	OFFENSE	MIN	MAX	RETRO DATE	PED	MPR	PEXD	
1.01	A	C253437	2	HABITUAL CRIMINAL (GREATER)	120	LIFE	03/20/2009	03/19/2019			HIGHEST
2.01	P	C253437	6	POSS/SELL/TRNSFR DOC TO ESTB FLS ID/ATTP	16	48	PENDING	PENDING	PENDING	PENDING	HIGH
2.02	P	C253437	8	POSS/SELL/TRNSFR DOC TO ESTB FLS ID/ATTP	16	48	PENDING	PENDING	PENDING	PENDING	HIGH

The following information is provided by a Nevada Department of Corrections, and is verified by a Correctional Caseworker.

DATE OF INCARCERATION: 03/20/2009
LENGTH OF INCARCERATION: 136 MONTHS TO LWPARDOLE

The above listed information has been verified by the undersigned Correctional Caseworker. The information provided on this document is considered accurate as of the date noted below. The dates provided above are subject to change at anytime due to credits the inmate may earn over time. For the most up to date information please contact the NDOC.

SIGNATURE SMITH, ROMAIN
CORRECTIONAL CASE WORK SPEC 2

8/19/22
DATE

CLOSED,IFP

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:20-cv-01709-KJD-VCF**

Bailey v. N.D.O.C. et al
Assigned to: Judge Kent J. Dawson
Referred to: Magistrate Judge Cam Ferenbach
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/15/2020
Date Terminated: 05/09/2023
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Anthony Bailey
36192
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

represented by **HDSP Law Library**
Email: HDSP_LawLibrary@doc.nv.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

N.D.O.C.
TERMINATED: 06/03/2021

represented by **Henry Kim**
Office of the Nevada Attorney General
555 E. Washington ave.
Suite 3900
Las Vegas, NV 89101
702-486-3095
Email: hkim@ag.nv.gov
TERMINATED: 11/08/2021

Defendant

Michael Minev
Medical Director

represented by **Michael Minev**
PRO SE

Aaron D. Ford-AG
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701
775-684-1100
Fax: 775-684-1108
Email: usdcfilings@ag.nv.gov
TERMINATED: 11/08/2021

Dawn R. Jensen
Office of the Attorney General
555 E. Washington Ave.
Ste. 3900

Las Vegas, NV 89101
702-486-3195
Email: drjensen@ag.nv.gov
TERMINATED: 09/22/2022

Douglas R Rands
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701-4717
775-684-1150
Fax: 775-684-1108
Email: drands@ag.nv.gov
TERMINATED: 11/08/2021

Defendant

Naph-Care

TERMINATED: 06/03/2021

Defendant

James McLowe

represented by **James McLowe**
PRO SE

Dawn R. Jensen
(See above for address)
TERMINATED: 09/22/2022

Defendant

Director of Nursing

High Desert State Prison

represented by **Director of Nursing**
PRO SE

Dawn R. Jensen
(See above for address)
TERMINATED: 09/22/2022

Defendant

Doctor Bryan

represented by **Bryan**
PRO SE

Dawn R. Jensen
(See above for address)
TERMINATED: 09/22/2022

Defendant

Doctor Martin

TERMINATED: 02/03/2023

represented by **Samuel Pezone , Jr**
Office of the Nevada Attorney General
Public Safety Division - NDOC
555 East Washington Avenue
Las Vegas, NV 89101
702-486-4070
Email: spezone@ag.nv.gov

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David A. Bailey
Office of the Attorney General
100 N. Carson St
Carson City, NV 89701
775-684-1163
Email: dabailey@ag.nv.gov
TERMINATED: 06/23/2022

Dawn R. Jensen
(See above for address)
TERMINATED: 09/22/2022

Henry Kim
(See above for address)
TERMINATED: 11/08/2021

Date Filed	#	Docket Text
09/15/2020	<u>1</u>	MOTION/APPLICATION for Leave to Proceed in forma pauperis by Plaintiff Anthony Bailey. (Attachments: # <u>1</u> Complaint, # <u>2</u> Proposed Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order) (AB) (Entered: 09/15/2020)
09/15/2020	<u>2</u>	ADVISORY LETTER to litigant. (AB) (Entered: 09/15/2020)
09/15/2020		Case randomly assigned to Judge Kent J. Dawson and Magistrate Judge Cam Ferenbach. (EDS) (Entered: 09/16/2020)
09/23/2020	<u>3</u>	ORDER denying <u>1</u> Motion/Application for Leave to Proceed in forma pauperis without prejudice. Mr Bailey shall refile a proper Application or Pay the filing fee in full on or before 11/16/2020. Clerk to supply Mr Baily with proper forms and instructions (attached here for distribution through law library). Signed by Magistrate Judge Cam Ferenbach on 9/23/2020. (Attachments: # <u>1</u> In Forma Pauperis Form and Instructions)(Copies have been distributed pursuant to the NEF - DRS) (Entered: 09/24/2020)
09/29/2020	<u>4</u>	MOTION/APPLICATION for Leave to Proceed in forma pauperis by Plaintiff Anthony Bailey. (AB) (Entered: 09/29/2020)
11/24/2020	<u>5</u>	ORDER denying <u>4</u> Motion/Application for Leave to Proceed in forma pauperis without prejudice. A fully complete IFP Application or Payment of filing fees in full must be received on or before 1/8/2021. The Clerk will supply to Plaintiff a new IFP Application and instructions (attached herein for distribution through law library). Signed by Magistrate Judge Cam Ferenbach on 11/24/2020. (Attachments: # <u>1</u> IFP Application and Instructions for distribution through law library)(Copies have been distributed pursuant to the NEF - DRS) (Entered: 11/24/2020)

52

12/02/2020	<u>6</u>	MOTION - Requesting the Court to Clarify Title 42 § 1997(e)(e) "Imminent Danger Doctrine" by Plaintiff Anthony Bailey. Responses due by 12/16/2020. (AB) (Entered: 12/02/2020)
12/07/2020	<u>7</u>	ORDER Denying as moot <u>6</u> Motion to Clarify. The Clerk is directed to supply plaintiff the approved application to proceed in forma pauperis and instructions (attached herein for distribution through law library). Plaintiff shall either pay the filing fee in full or complete and return the application on or before 2/2/2021. Signed by Magistrate Judge Cam Ferenbach on 12/7/2020. (Attachments: # <u>1</u> IFP Packet and Instructions)(Copies have been distributed pursuant to the NEF - DRS) (Entered: 12/07/2020)
01/15/2021	<u>8</u>	MOTION/APPLICATION for Leave to Proceed in forma pauperis by Plaintiff Anthony Bailey. (AB) (Entered: 01/19/2021)
02/15/2021	<u>9</u>	JUDICIAL NOTICE by Anthony Bailey (<i>Exhibit A attached separately under seal due to confidential information</i>). (AB) (Additional attachment(s) added on 2/16/2021: # <u>1</u> Exhibit A) (AB). (Entered: 02/16/2021)
06/03/2021	<u>10</u>	SCREENING ORDER. Decision on Plaintiff's <u>8</u> application to proceed in forma pauperis is deferred. The Clerk is directed to file the complaint at [1-1] and to sent a copy to Plaintiff (attached herein). Defendants NDOC and Naphcare are dismissed with prejudice. The [1-2] Motion for temporary restraining order and preliminary injunction is DENIED. The Clerk of Court is directed to add Attorney General to this case and to serve same a copy of the Complaint and this order electronically. The Attorney General's Office is to advise the court within 21 days of the date of the entry of this order whether it will enter a limited notice of appearance on behalf of the defendants for the purpose of settlement. This matter is referred to Inmate Mediation Program and is stayed for 90 days to allow for mediation and/or settlement. Motions for exclusion from inmate mediation program are due within 21 days. 90-day stay report due 9/1/2021. Signed by Judge Kent J. Dawson on 6/3/2021. (copy of complaint sent to P) (Attachments: # <u>1</u> Complaint for dissemination through law library)(Copies have been distributed pursuant to the NEF - DRS) (Entered: 06/03/2021)
06/03/2021	<u>11</u>	COMPLAINT against Bryan, Director of Nursing, Martin, James McLowe, Michael Minev, N.D.O.C., Naph-Care by Anthony Bailey. NDOC and Naph-Care Dismissed by Court <u>10</u> Order. (DRS) (Entered: 06/03/2021)
06/24/2021	<u>12</u>	NOTICE of Appearance by attorney Henry Kim on behalf of Defendant N.D.O.C.. (Kim, Henry) (Entered: 06/24/2021)

53

07/06/2021	<u>13</u>	ORDER setting Inmate Early Mediation Conference. An Inmate Early Mediation Conference is set for 8/13/2021 at 08:30 AM in LV Chambers before Mediator James Kohl. The Attorney General's Office will make the necessary arrangements for plaintiff to appear by video and will provide Angela Reyes at angela_reyes@nvd.uscourts.gov with the video conference reservation number and telephone number at which the plaintiff can be reached. The mediation statements shall be delivered directly to the mediator no later than 7/30/2021. DO NOT FILE THE MEDIATION STATEMENTS; DO NOT SERVE A COPY ON OPPOSING COUNSEL. See the attached order for specifications. Signed by Magistrate Judge Cam Ferenbach on 7/6/2021. (Copies have been distributed pursuant to the NEF - DRS) (Entered: 07/07/2021)
08/13/2021	<u>14</u>	MINUTES OF PROCEEDINGS - Early Mediation Conference held on 8/13/2021 before Mediator James Kohl. Crtrm Administrator: <i>T. Renfro</i> ; Pla Counsel: <i>Anthony Bailey, Pro Se</i> ; Def Counsel: <i>Henry Kim</i> ;; Jeremy Bean, NDOC; and Nancy Katafias, Tort Claim Manager; Time of Hearing: 8:47 - 9:50 a.m.; SEALED Recording start and end times: 9:49 - 9:50 a.m.; Courtroom: 3A; 1st mediation session. A settlement was NOT reached. This case shall be returned to its normal litigation track. The recording of this report of mediation is SEALED. (no image attached) (Copies have been distributed pursuant to the NEF - TR) (Entered: 08/13/2021)
09/01/2021	<u>15</u>	STATUS REPORT <i>Report of the Office of the Attorney General Re: Results of the 90 Day Stay</i> by Defendant Michael Minev. (Rands, Douglas) (Entered: 09/01/2021)
09/01/2021	<u>16</u>	ORDER granting <u>8</u> Motion/Application for Leave to Proceed in forma pauperis; Plaintiff is allowed to proceed without prepayment of filing fees. A copy of this order shall be forwarded to Inmate Services for payment information. The Clerk is directed to serve a copy of the <u>11</u> Complaint (NEF regenerated) and this order electronically upon the Attorney General's Office for the State of Nevada. The AG's office shall file notice with the court regarding representation and service as outlined in the order within 21 days. Signed by Magistrate Judge Cam Ferenbach on 9/1/2021. (Copies have been distributed pursuant to the NEF - DRS) (Entered: 09/01/2021)
09/22/2021	<u>17</u>	ACCEPTANCE OF SERVICE by Martin on 9/22/2021 executed by Martin re <u>16</u> Order on Motion/Application to Proceed in forma pauperis,,,,,. (Kim, Henry) (Entered: 09/22/2021)
09/22/2021	<u>18</u>	NOTICE OF UNDER SEAL SUBMISSION by Martin re <u>16</u> Order on Motion/Application to Proceed in forma pauperis,,,,,. (Kim, Henry) (Entered: 09/22/2021)
11/01/2021	<u>20</u>	ANSWER to <u>11</u> Complaint with Jury Demand <i>Defendant Gregory Martin's Answer to Plaintiff's Complaint (ECF No. 11) (Jury Trial Demanded)</i> filed by Martin. Discovery Plan/Scheduling Order due by 12/1/2021.(Bailey, David) NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1-1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 11/01/2021)

11/08/2021	<u>21</u>	NOTICE of Change of Deputy Attorney General on behalf of Defendant Martin. Deputy Attorney General Douglas R Rands; Aaron D. Ford-AG and Henry Kim terminated. (Bailey, David) Modified on 11/9/2021 (EDS). (Entered: 11/08/2021)
11/29/2021	<u>22</u>	SCHEDULING ORDER. Discovery due by 4/18/2022. Motions due by 5/18/2022. Proposed Joint Pretrial Order due by 6/17/2022. Signed by Magistrate Judge Cam Ferenbach on 11/29/2021. (Copies have been distributed pursuant to the NEF - DRS) (Entered: 11/29/2021)
02/22/2022	<u>23</u>	DECLARATION for Entry of Default, by Plaintiff Anthony Bailey. (DRM) (Entered: 02/22/2022)
03/16/2022	<u>24</u>	MOTION for Subpoena, by Plaintiff Anthony Bailey. Responses due by 3/30/2022. (DRM) (Entered: 03/16/2022)
03/30/2022	<u>25</u>	RESPONSE to <u>24</u> Motion by Defendant Martin. Replies due by 4/6/2022. (Bailey, David) (Entered: 03/30/2022)
04/21/2022	<u>26</u>	First STIPULATION FOR EXTENSION OF TIME (First Request) re Discovery <i>Cut-Off and All Subsequent Deadlines by 30 Days</i> re <u>22</u> Scheduling Order by Defendant Martin. (Bailey, David) (Entered: 04/21/2022)
04/22/2022	<u>27</u>	ORDER granting <u>26</u> Stipulation; Discovery due by 5/18/2022. Motions due by 6/17/2022. Proposed Joint Pretrial Order due by 7/18/2022. Signed by Magistrate Judge Cam Ferenbach on 4/22/2022. (Copies have been distributed pursuant to the NEF - HAM) (Entered: 04/22/2022)
04/22/2022	<u>28</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.) (HAM) (Entered: 04/22/2022)
05/17/2022	<u>29</u>	ORDER Denying without prejudice <u>24</u> Motion for Subpoena. It is further ordered that the parties must meet-and-confer on this matter regarding plaintiffs document request, on or before 06/21/2022. Discovery due by 6/21/2022. Motions due by 7/21/2022. Proposed Joint Pretrial Order due by 8/22/2022. See order for further details. Signed by Magistrate Judge Cam Ferenbach on 5/17/2022. (Copies have been distributed pursuant to the NEF - LOE) (Entered: 05/18/2022)
06/23/2022	<u>30</u>	NOTICE of Change of Deputy Attorney General on behalf of Defendant Martin. Deputy Attorney General David A. Bailey terminated. (Jensen, Dawn) (Entered: 06/23/2022)
07/21/2022	<u>31</u>	MOTION for Summary Judgment re <u>29</u> Order on Motion,,, by Defendant Martin. Responses due by 8/11/2022. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Declaration of Geraldine Worthy, # <u>12</u> Declaration of Julie Williams)(Jensen, Dawn) (Entered: 07/21/2022)
07/21/2022	<u>32</u>	MOTION for Leave to File Exhibits C, E, F, and G Under Seal in Support of Defendant's Motion for Summary Judgment re <u>31</u> Motion for Summary Judgment, by

65

		Defendant Martin. Responses due by 8/4/2022. (Jensen, Dawn) (misc) (sumjgm) (Entered: 07/21/2022)
07/21/2022	<u>34</u>	NOTICE of Filing Under Seal Submission of Exhibits C, E, F, and G in Support of Defendant's Motion for Summary Judgment by Martin re <u>31</u> Motion for Summary Judgment,.. (Jensen, Dawn) (Entered: 07/21/2022)
07/29/2022	<u>35</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Kent J. Dawson on 7/29/2022. Presently before the Court is Defendant's Unopposed Motion to Seal Exhibits (#32). Having read and considered the motion, and good cause being found, it is GRANTED. (no image attached) (Copies have been distributed pursuant to the NEF - DXS) (Entered: 07/29/2022)
08/04/2022	<u>36</u>	MOTION <i>objecting to use of exhibits filed under seal</i> (re ECF Nos. <u>31</u> Motion for Summary Judgment, <u>32</u> Motion, <u>33</u> Notice (Other), <u>34</u> Notice (Other)) by Plaintiff Anthony Bailey. Responses due by 8/18/2022. (HKL) (misc) (dispositive) (Entered: 08/04/2022)
08/04/2022	<u>37</u>	MOTION to Extend Time (30 days starting from 8-11-22) (re ECF No. <u>31</u> Motion for Summary Judgment) by Plaintiff Anthony Bailey. Responses due by 8/18/2022. (Image is identical to ECF No. <u>36</u> .) (HKL) (sumjgm) (Entered: 08/04/2022)
08/18/2022	<u>38</u>	RESPONSE to <u>36</u> Motion, by Defendant Martin. Replies due by 8/25/2022. (Attachments: # <u>1</u> Exhibit A)(Jensen, Dawn) (Entered: 08/18/2022)
08/18/2022	<u>39</u>	RESPONSE to <u>37</u> Motion to Extend/Shorten Time by Defendant Martin. Replies due by 8/25/2022. (Attachments: # <u>1</u> Exhibit A)(Jensen, Dawn) (Entered: 08/18/2022)
08/24/2022	<u>40</u>	MOTION <i>Declaration</i> for Entry of Default, by Plaintiff Anthony Bailey. Responses due by 9/7/2022. (Attachments: # <u>1</u> Declaration in Support)(DRM) (Entered: 08/24/2022)
08/24/2022	<u>41</u>	RESPONSE to ECF No. <u>31</u> Motion for Summary Judgment, by Plaintiff Anthony Bailey. Replies due by 9/7/2022. (DRM) (Entered: 08/24/2022)
08/24/2022	<u>42</u>	EXHIBITS re ECF No. <u>41</u> Response to ECF No. <u>31</u> Motion for Summary Judgment, by Plaintiff Anthony Bailey. (Submitted electronically via HDSP law library, separately and subsequently from ECF No. <u>41</u> Response.) (DRM) (Entered: 08/24/2022)
09/07/2022	<u>43</u>	REPLY to Response to <u>31</u> Motion for Summary Judgment, by Defendant Martin. (Jensen, Dawn) (Entered: 09/07/2022)
09/22/2022	<u>44</u>	NOTICE of Change of Deputy Attorney General on behalf of Defendant Martin. Deputy Attorney General Dawn R. Jensen terminated. (Pezone, Samuel) (Entered: 09/22/2022)
10/17/2022	<u>45</u>	MOTION <i>Requesting an Order for Entry of Default Judgment Pursuant to Rule 55(a) Against Defendant Bryan and Non-Responsive Defendants</i> by Plaintiff Anthony Bailey. Responses due by 10/31/2022. (CJS) (Entered: 10/17/2022)
02/03/2023	<u>46</u>	ORDER. IT IS ORDERED that Plaintiff's Motions for Entry of Default Judgment <u>23</u> , <u>40</u> and <u>45</u> are DENIED. Signed by Judge Kent J. Dawson on 2/3/2023. (Copies have been distributed pursuant to the NEF - LOE) (Entered: 02/03/2023)

02/03/2023	<u>47</u>	ORDER Granting <u>31</u> Motion for Summary Judgment. ORDER Denying <u>36</u> Motion. ORDER Granting <u>37</u> Motion. IT IS FURTHER ORDERED that the Clerk of the Court enter JUDGMENT for Defendant Martin and against Plaintiff. Signed by Judge Kent J. Dawson on 2/3/2023. (Copies have been distributed pursuant to the NEF - LOE) (Entered: 02/03/2023)
02/03/2023	<u>48</u>	JUDGMENT in favor of Martin against Anthony Bailey. Signed by Clerk of Court Debra K. Kempf on 2/3/2023. (Copies have been distributed pursuant to the NEF - LOE) (Entered: 02/03/2023)
02/15/2023	<u>49</u>	MOTION 60(b)(1) Motion (failing to provide Notice Required by Rule) re ECF No. <u>10</u> Screening Order, by Plaintiff Anthony Bailey. Responses due by 3/1/2023. (CJS) (misc) (presiding) (Entered: 02/15/2023)
03/01/2023	<u>50</u>	RESPONSE to <u>49</u> Motion by Defendant Martin. Replies due by 3/8/2023. (Pezone, Samuel) (Entered: 03/01/2023)
03/29/2023	<u>51</u>	REPLY to Response (ECF No. <u>50</u>) to ECF No. <u>49</u> Motion 60(b)(1) by Plaintiff Anthony Bailey. (CJS) (Entered: 03/29/2023)
05/09/2023	<u>52</u>	ORDER DISMISSING CASE. Bailey has failed to comply with Rule 4 and therefore, the action against Defendant Bryan is dismissed with prejudice. Signed by Judge Kent J. Dawson on 5/9/2023. (Copies have been distributed pursuant to the NEF - CAH) (Entered: 05/09/2023)
05/09/2023	<u>53</u>	ORDER. IT IS ORDERED that <u>49</u> Plaintiff's Rule 60(b) Motion for Reconsideration is DENIED. Signed by Judge Kent J. Dawson on 5/9/2023. (Copies have been distributed pursuant to the NEF - JQC) (Entered: 05/09/2023)

EXHIBIT

C

CASE No. 09C253437

מחזורי חורף

Case Type:	Felony/Gross Misdemeanor
Date Filed:	04/07/2009
Location:	Department 20
Reference Case	C253437
Number:	
Scope ID #:	0683227
Case Number:	09FN00470
me Court No.:	56748
	56592
	58406
	59948
	60144
	64599
	65989

		Lead Attorneys
Defendant	Bailey, Anthony D <i>Also Known</i> As Bailey , Anthony	Pro Se
Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)

Charges: Bailey, Anthony D

1. SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
2. SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
3. SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
4. SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
5. SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
6. POSSESSION OR SALE OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION TO ESTABLISH FALSE STATUS OR I...
7. POSSESSION OR SALE OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION TO ESTABLISH FALSE STATUS OR I...
8. POSSESSION OR SALE OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION TO ESTABLISH FALSE STATUS OR I...
9. COERCION
10. BURGLARY

Statute	Level	Date
200.366.2b	Felony	01/01/1900
200.366.2b	Felony	01/01/1900
200.366.2b	Felony	01/01/1900
200.366.2b	Felony	01/01/1900
200.366.2b	Felony	01/01/1900
205.465	Felony	01/01/1900
205.465	Felony	01/01/1900
205.465	Felony	01/01/1900
207.190	Felony	01/01/1900
205.060	Felony	01/01/1900

04/22/2014 | Jury Trial (10:30 AM) (Judicial Officer Thompson, Charles)
04/22/2014, 04/23/2014, 04/24/2014, 04/25/2014, 04/28/2014, 04/29/2014

04/21/2014 9:00 AM

04/22/2014 10:30 AM

- 10:22 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS:
Court memorialized the discussion with Ms. Luzaich and Mr.

Oram as to the procedures of the Court as Defendant is in proper person and the role of Mr. Oram as stand-by-counsel. Court noted proposed questions have been submitted by Ms. Luzaich and Defendant that the Court will ask prospective Jurors. Additionally, there will be no side bars as Defendant is in proper person and in custody; that after the Jury has been excused, the Court will ask if either side wants to put something on the record. Ms. Luzaich advised during the course of this case, there have been a lot of legal issues raised and resolved and would request the Court prohibit Defendant from going back into them. Additionally, Defendant has tried several different ways to challenge the validity of his arrest and initial contact with Police through Writs and Motions, all of which have been denied. Ms. Luzaich advised she is concerned that Defendant will say things that are inappropriate. Court noted if these issues have already been ruled on, they will not be raised again. Statements by Defendant. Colloquy as to CPS records. Ms. Luzaich advised there will be no CPS documents introduced. Colloquy as to DNA. Ms. Luzaich advised that she is not introducing any DNA evidence. Defendant advised he will reserve his opening statement to the close of the State's case. 11:05 AM PROSPECTIVE JURORS PRESENT: Introductions by Court. Jury selection begins. OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Ms. Luzaich requested the Court find out why a prospective juror would be more prejudiced to one side or the other. 1:35 PM PROSPECTIVE JURORS PRESENT: Jury selection continued. OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Ms. Luzaich requested Defendant stop communicating with the prospective Jurors. Colloquy. Ms. Luzaich stated she challenged a prospective juror (#19), the Court denied the challenge and she objects to this juror not being excused. 3:18 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 4:30 PM OUTSIDE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding Defendant looking / staring at prospective Jurors and making them nervous. Court admonished Defendant to not stare at the prospective Jurors. EVENING RECESS. ...CONTINUED 4/23/14 9:30 AM

04/23/2014 9:00 AM

04/23/2014 9:30 AM

- 9:32 AM OUTSIDE PRESENCE OF THE PROSPECTIVE JURORS: Ms. Luzaich advised she received a call from Mace Yampolsky, the attorney for Mr. Shannon, who Defendant stated would be testifying for him, however, Mr. Yampolsky stated that Mr. Shannon has been advised not to testify. Defendant stated his Investigator, Howard Saxon, spoke with Mr. Shannon with approval from prior counsel and was advised that he would testify. Ms. Luzaich stated that Mr. Yampolsky will not let him now. Defendant inquired as to why none of the questions he submitted have been asked of the Jurors. Court noted that many of the questions are not relevant and therefore will not be asked. 9:43 AM PROSPECTIVE JURORS PRESENT: Jury selection continued. 11:12 AM ADDITIONAL PROSPECTIVE JURORS PRESENT: Additional Jurors sworn and Jury selection continues. 11:35 AM Jury and 2 Alternates selected and sworn. OUTSIDE PRESENCE OF JURY: Statements by Defendant as to the DNA report/manual. Ms. Luzaich advised she is not bringing in any DNA evidence, that the lab has twice sent this to the Defense and they will not send it again. Additionally, Ms. Luzaich advised the policy / procedure manual was not part of the request for discovery and was denied by Judge Herndon. LUNCH BREAK. 1:26 PM OUTSIDE PRESENCE OF JURY: Court advised per Judge Herndon's Order, no further DNA evidence will be provided. JURY PRESENT: Court stipulated to the

presence of the Jury. Instructions by the Court. Information read by the Clerk. Opening statements by Ms. Luzaich. Upon Court's inquiry, Defendant advised he will defer his opening statement. Testimony and exhibits presented (see worksheets). **OUTSIDE PRESENCE OF JURY:** Ms. Luzaich objected to Defendant bringing up the law suit he filed against the North Las Vegas Police Department that has been denied. 3:08 PM **JURY PRESENT:** Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 4:14 PM **JURY EXCUSED.** Defendant objected that the document from the Drug Program was not admitted. Ms. Luzaich advised that Defendant should never have been given a copy of this document. Defendant stated he would like to question Ms. Romano as to that document. Following colloquy, Court advised it is not relevant. **EVENING RECESS. ... CONTINUED 4/24/14 10:00 AM**

04/24/2014 10:00 AM

- 10:07 AM **OUTSIDE PRESENCE OF THE JURY:** Defendant stated that yesterday, during the testimony of Crystal, that she brought up "other bad acts" and proffered a Motion for a Mistrial. Statements by Ms. Luzaich. Court noted the statements do not rise to the level of a mistrial and **ORDERED, Motion DENIED.** At request of the parties, the exclusionary rule is invoked. 10:19 AM **JURY PRESENT:** Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). **LUNCH BREAK.** Ms. Luzaich advised she objected to Defendant trying to get into the CPS records through Crystal. 1:34 PM **JURY PRESENT:** Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 1:51 PM **OUTSIDE PRESENCE OF THE JURY:** Crystal advised Defendant made a threatening gesture to her when she was leaving that one of the Jurors could have seen. Following review of the tape, Court noted as the camera never picked up Defendant, it is inconclusive if there was a gesture. **JURY PRESENT:** Court stipulated to presence of the Jury. Testimony and exhibits continued (see worksheets). 4:25 PM **JURY EXCUSED.** Statements by Defendant as to a toxicology report. Ms. Luzaich advised she does not have this. Upon Court's inquiry, Defendant advised he is trying to prove that Crystal is not credible and is lying. Ms. Luzaich advised there are HIPAA regulations. **EVENING RECESS. ... CONTINUED 4/25/14 9:00 AM**

04/25/2014 9:00 AM

- 9:08 AM **JURY PRESENT:** Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 10:32 AM **OUTSIDE PRESENCE OF THE JURY:** Ms. Luzaich advised Defendant was asking a question of Officer Winfield that was opening to door to his prior convictions. 10:48 AM **JURY PRESENT:** Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 11:23 AM **STATE RESTS.** Opening statement by Defendant. **LUNCH RECESS.** **OUTSIDE PRESENCE OF JURY:** Defendant admonished of his right to testify. Ms. Luzaich advised DNA is not relevant as ID is not an issue in this case and would object to any DNA evidence coming in. Statements by Defendant as to why he wants the DNA evidence introduced. Defendant stated there was a false report as to his DNA and would like to introduce that report. Objections by Ms. Luzaich and advised there was an error as to the report, the report was corrected and the person making the error was fired. Defendant requested a mistrial as the DNA evidence will not be allowed. Court **DENIED** request for a mistrial. 1:06 PM **OUTSIDE PRESENCE OF JURY:** Court noted that one of the Defense witnesses is taking the 5th

and will be questioned by the Court and Defendant. Willie Shannon, sworn, and appeared with his attorney, Mace Yampolsky. Statements by Mr. Yampolsky. Following and upon inquiry, Mr. Shannon advised he would not be testifying. Witness excused. Colloquy as to other DNA lab people being able to testify. Court noted that an error was made, the report was corrected, and the report that is in error will not be admitted. 1:37 PM JURY PRESENT: Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). OUTSIDE PRESENCE OF JURY: Colloquy as to DNA lab people. Defendant objected to Ms. Luzaich trying to orchestrate his defense. Ms. Luzaich stated that per a prior ruling, the people the Defendant want to testify are irrelevant. Arguments by Defendant. OUTSIDE THE PRESENCE OF OTHER JURORS: Juror #12 was brought into Court as she told the Marshall that she recognized Rodney Thomas from years ago in the area where she hung out. Upon Court's inquiry, Juror #12 advised she can be fair, that she doesn't know him personally, just recognized him from the area. 2:36 PM JURY PRESENT: Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 4:59 PM JURY EXCUSED. Colloquy as to Jury instructions and proceedings on Monday with Defendant and Ms. Luzaich directed to be present at 10:45 AM on Monday. ... CONTINUED 4/28/14 1:00 PM

04/28/2014 1:00 PM

- 10:46 AM OUTSIDE PRESENCE OF THE JURY: Defendant again requested a mistrial due to the fact that the Court would not let in the reports of Murga and Paulette. COURT ORDERED, DENIED. Jury instructions settled on the record. LUNCH BREAK. 1:01 PM OUTSIDE PRESENCE OF JURY: Defendant would like to "re-open" his case to introduce the tax documents from the IRS. Court so Ordered. 1:06 PM JURY PRESENT: Court stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 1:26 PM DEFENSE RESTS. Rebuttal. Testimony concludes. Jury Instructions read by Court. Closing arguments Ms. Luzaich and Defendant. Rebuttal argument by Ms. Luzaich. 3:42 PM Jury retired to deliberate. Court thanked and excused the Alternates. 4:45 PM Jury sent home to return at 9:00 A.M. ... CONTINUED 4/29/14 9:00 AM

04/29/2014 9:00 AM

- 9:00 AM Jury returns for deliberation. 1:16 PM JURY PRESENT: Court stipulated to the presence of the Jury. Jury Foreperson advised a verdict had been reached: COUNT 1 - Sexual Assault With Use of a Deadly Weapon - NOT GUILTY; COUNT 2 - Sexual Assault With Use of a Deadly Weapon - GUILTY of Sexual Assault Without Use of a Deadly Weapon; COUNT 3 - Sexual Assault With Use of a Deadly Weapon - NOT GUILTY; COUNT 4 - Sexual Assault With Use of a Deadly Weapon - NOT GUILTY; COUNT 5 - Sexual Assault With Use of a Deadly Weapon - NOT GUILTY; COUNT 6 - Possession or Sale of Document or Personal Identifying Information to Establish False Status or Identity - GUILTY a Category "E" Felony; COUNT 7 - Possession or Sale of Document or Personal Identifying Information to Establish False Status or Identity - NOT GUILTY; COUNT 8 - Possession or Sale of Document or Personal Identifying Information to Establish False Status or Identity - GUILTY a Category "E" Felony; COUNT 9 - Coercion - GUILTY of Coercion, a Misdemeanor; COUNT 10 - Burglary - NOT GUILTY. Jury polled at request of the Court. Court thanked and excused the Jury. Defendant held without bail. Court referred matter to the Division of Parole and Probation for a Pre-sentence Investigation Report and ORDERED, set for sentencing. CUSTODY 8/22/14 8:30 AM SENTENCING
- Defendant's request for a conviction as implied acquittal.*