In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11024

ARUAN ALEMAN HERNANDEZ,

Plaintiff-Appellant,

versus

PALM BEACH COUNTY STATE ATTORNEY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-80985-RNS

Before NEWSOM, LUCK, and ABUDU, Circuit Judges.

BY THE COURT:

Aruan Hernandez has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated August 31, 2023, denying his motion for leave to proceed. Upon review, Hernandez's motion for reconsideration is DENIED because he has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions.

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Before NEWSOM, LUCK, and ABUDU, Circuit Judges.

BY THE COURT:

Aruan Hernandez, a Florida prisoner, brought a *pro se* complaint against Dave Aronberg, in his official capacity as Florida State Attorney. Hernandez's 75-page complaint was titled "§ 1331's Motion by a Victim Deprived of the Equal Protections of the Law and Due Process of the Law and a Denial to Access the Court to Start a Cause of Action Under his Fundamental Rights," and included detailed legal explanations related to federal question jurisdiction, Florida perjury law, and federal equal protection law. He appeared to raise a Fourteenth Amendment violation, asserting that he was denied equal protection of the law by the state's failure to prosecute two women, one of whom was the victim of his sexual battery convictions, for falsely testifying at his criminal trial.

The district court determined that the complaint was frivolous, failed to state a claim, and was subject to dismissal under 28 U.S.C. § 1915(e)(2). It noted that the complaint contained lengthy discussions of law that did not appear relevant or to establish a clear cause of action, but it construed the complaint as being brought under 42 U.S.C. § 1983 and appearing to raise a Fourteenth Amendment equal protection claim.

The district court concluded that Hernandez, however, failed to establish a viable equal protection claim, and, further, the claim was frivolous because he could not prove that he was in a similarly situated class as the women who testified against him, and the record did not support that the victim testified falsely. Additionally, to the extent that Hernandez attempted to assert due

process violations and denial of access to the courts, the district court concluded, without explanation, that neither claim was plausible on its face.

Because it concluded that the claims were clearly frivolous, the district court dismissed the complaint with prejudice. Hernandez appealed and moved to appeal IFP, which the district court denied. He now moves this Court for LTP.

All prisoners seeking to commence or appeal a judgment in a civil non-habeas action must pay the filing fees, regardless of whether they are indigent, or the appeal is non-frivolous. 28 U.S.C. § 1915(a), (b). Because Hernandez has agreed to pay the filing fee, the only remaining issue regarding his leave to proceed motion is whether an appeal would be frivolous. *See id.* § 1915(e)(2)(B). "[A]n action is frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (en banc).

This Court reviews a district court's *sua sponte* dismissal of a complaint under § 1915(e)(2)(B) for an abuse of discretion. *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003). A district court must dismiss an IFP action if the court determines that the action is "frivolous or malicious." 28 U.S.C. § 1915(e)(2)(B)(i). Prior to dismissing a civil action *sua sponte*, a court normally must provide the plaintiff "with notice of its intent to dismiss and an opportunity to respond." *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). "An exception to this requirement exists, however,

when amending the complaint would be futile, or when the complaint is patently frivolous." *Id.*

The Fourteenth Amendment's Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." To state an equal protection claim, a plaintiff must allege that similarly-situated persons have been treated disparately through state action. *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006). Different treatment of persons who are dissimilarly situated, however, does not violate the Equal Protection Clause. *Id.* Individuals are similarly situated if they are "*prima facie* identical in all relevant respects." *See id.* (citation omitted).

Here, there is no meritorious argument that the district court erred in dismissing the case. Beyond Hernandez's speculation, there is no indication that the witnesses in his criminal trial testified falsely. Additionally, he cannot establish that he was similarly situated as the two women whom he believes were treated disparately from him, as they were witnesses at his criminal trial, and one was the victim of his sexual batteries. *See Campbell*, 434 F.3d at 1314.

Further, the district court did not err in its conclusion that Hernandez's due process and access to courts claims, to the extent that he raised them, were not plausible on their face, as Hernandez failed to show that the witnesses testified falsely. The district court also did not abuse its discretion by dismissing the complaint with

United States District Court
for the
Southern District of Florida

Aruan Aleman Hernandez, Plaintiff,	)	
v.	)	Civil Action No. 22-80985-Scola
Dave Aronberg., Defendant.	)	

Order Dismissing Case

Aruan Hernandez, a prisoner at Everglades Correctional Institution, has filed a complaint titled "§ 1331's Motion by a Victim Deprived of the Equal Protections of the Law and Due Process of the Law and a Denial to Access the Court to Start a Cause of Action Under His Fundamental Rights." (Compl. at 1, 88, ECF No. 1.) He also filed a motion to proceed *in forma pauperis* (ECF No. 3), and a motion for appointment of attorney (ECF No. 4). As required by 28 U.S.C. § 1915(e)(2), the Court has screened the complaint and, for the reasons stated herein, concludes that it shall be dismissed as frivolous and for failure to state a claim.

1. The Complaint

The Court has struggled to interpret Hernandez's 75-page complaint. (*See generally* Compl.) It contains lengthy discussions of law, primarily *Smith v. Kansas City Title & Tr. Co.*, 255 U.S. 180 (1921) and 28 U.S.C. § 1331, in an apparent attempt to show that the Court has subject matter jurisdiction. (*See, e.g.*, *id.* at 3–12.) But § 1331 does not provide a cause of action, and the Court sees little relevance of *Smith*, a shareholder case from 1921 that challenged the constitutionality of the Federal Farm Loan Act. 255 U.S. at 202.

However, the Court has "an obligation to look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework." *United States v. Jordan*, 915 F.2d 622, 624–25 (11th Cir. 1990). In essence, the complaint asserts that the Palm Beach County State Attorney is violating Hernandez's Fourteenth Amendment rights by not prosecuting two women who testified against him in the criminal case that resulted in his life imprisonment. (*See* Compl. at 13–15.) Because Hernandez is alleging that a state actor has deprived him of a right "secured by the Constitution," 42 U.S.C. § 1983 is the

appropriate cause of action. Accordingly, the Court construes Hernandez's complaint as one brought under § 1983.

2. Legal Standard

Under 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss any *in forma pauperis* action that "(i) is frivolous or malicious" or (ii) "fails to state a claim on which relief may be granted." Frivolous claims are those that are "based on an indisputably meritless legal theory" or "whose factual contentions are clearly baseless." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). The standards for dismissal for failure to state a claim under § 1915(e)(2)(B)(ii) are identical to those under Fed. R. Civ. P. 12(b)(6). *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). Thus, under § 1915(e)(2)(B)(ii), the Court must dismiss a complaint that fails "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Rodriguez v. Scott*, 775 F. App'x 599, 602 (11th Cir. 2019) (per curiam) (cleaned up). However, a district court is not required to "rewrite an otherwise deficient pleading in order to sustain an action." *Id.* at 603 (cleaned up).

3. Discussion

As noted above, Hernandez's claim is that the State Attorney is violating Hernandez's Equal Protection rights by refusing to prosecute two women who testified against Hernandez in the criminal case that resulted in his life imprisonment. (*See* Compl. at 13–15.) He seeks injunctive relief in the form of an order for the State Attorney to prosecute them. (*Id.* at 87.)

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). "To establish an equal protection claim, a [plaintiff] must demonstrate that (1) he is similarly situated to other [persons] who received more favorable treatment; and (2) the state engaged in invidious discrimination against him based on race, religion, national origin, or some other constitutionally protected basis." *See Sweet v. Sec'y, Dep't of Corr.*, 467 F.3d 1311, 1318-19 (11th Cir. 2006).

4. Conclusion

For the reasons set forth above, Hernandez's complaint (ECF No. 1) is **dismissed with prejudice**. The motion for leave to proceed *in forma pauperis* (ECF No. 3) and motion for appointment of attorney (ECF No. 4) are **denied** as moot. The Clerk is directed to **close** this case and **mail** a copy of this order to Hernandez.

Done and ordered, in chambers, in Miami, Florida, on July 8th, 2022.

Robert N. Scola, Jr.
United States District Judge

Copies, via U.S. Mail, to
Aruan Aleman Hernandez
C80313
Everglades Correctional Institution
Inmate Mail/Parcels
1599 SW 187th Avenue
Miami, FL 33194
PRO SE

Hernandez does not claim class-based discrimination. Construed liberally, *see Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003), his complaint asserts that he is in a "class of one." *See Engquist v. Or. Dep't of Agr.*, 553 U.S. 591, 601 (2008) ("[A]n equal protection claim can in some circumstances be sustained even if the plaintiff has not alleged class-based discrimination, but instead claims that [he] has been irrationally singled out as a so-called 'class of one.'"). To state a "class of one" equal protection claim, a plaintiff must adequately allege he has "been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Id.* (quotation marks omitted). Hernandez claims that he is "similarly situated" to the women who testified against him, and they received more favorable treatment in that the State prosecuted Hernandez for the crime of sexual battery, but it is not prosecuting his accusers for perjury. (*See* Compl. at 36.)

Construed liberally and accepting all facts as true, Hernandez's complaint fails to set forth a viable Equal Protection claim. Hernandez cannot possibly prove that he is similarly situated to the women who testified against him. One of those women is the victim of the sexual batteries he was convicted of committing; she was fourteen years old at the time of her testimony. *See* Order at 13, *Hernandez v. Sec'y, Dep't of Corr.*, No. 20-cv-81158 (S.D. Fla. July 23, 2021), ECF No. 30.[1] And there is an obvious rational basis for the State's decision to prosecute Hernandez but not his accusers: Whereas probable cause existed for Hernandez's arrest, "[t]he record does not support a finding that the minor victim knowingly testified falsely regarding her recollection of events." (*Id.* at 16.)

Thus, the Court concludes that Hernandez's Equal Protection claim is frivolous because it is "based on an indisputably meritless legal theory." *Neitzke*, 490 U.S. at 327. To the extent he has attempted to set forth independent claims of violations of his rights to due process and access to the court, (*see* Compl. at 1, 85), neither of those claims "is plausible on its face." *Twombly*, 550 U.S. at 570. Accordingly, dismissal is required under 28 U.S.C. § 1915(e)(2). Although pro se plaintiffs are normally given at least one chance to amend a deficient complaint, sua sponte dismissal is appropriate for claims that are clearly frivolous. *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part on other grounds by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc).

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[1] "This Court may take judicial notice of Plaintiff's prior action . . . in determining whether to dismiss this action." *Belton v. Pereira*, No. 3:20-cv-35-MCR-HTC, 2020 WL 907580, at *2 (N.D. Fla. Jan. 24, 2020).

APPENDIX D

DISTRICT COURT'S ORDER DENYING MOTION PURSUANT F.R.C.P. 59

12a TO 13a

United States District Court
for the
Southern District of Florida

Aruan Aleman Hernandez, Plaintiff,)
)
v.) Civil Action No. 22-80985-Civ-Scola
)
Dave Aronberg, Defendant.)

Judgment in a Civil Action

The Court has dismissed this action. (ECF No. 5.) Because the order dismissing this action is a judgment, as defined by Rule 54(a) of the Federal Rules of Civil Procedure, the Court enters judgment in this matter under Rule 58 of the Federal Rules of Civil Procedure. This matter is to remain **closed**.

Done and ordered at Miami, Florida on March 1, 2023.

Robert N. Scola, Jr.
United States District Judge

Subject:Activity in Case 9:22-cv-80985-RNS Hernandez v. Aronberg Order on Motion to Vacate

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U.S. District Court
Southern District of Florida

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Case Name: Hernandez v. Aronberg

Case Number: 9:22-cv-80985-RNS

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Document Number: 8

8(No document attached)

Docket Text:
PAPERLESS ORDER: The Court denies [7] pro se Plaintiff Aruan Aleman Hernandez's motion to vacate [5] the order dismissing his case. Hernandez has not set forth either a legal or factual basis that would warrant the Court's reopening his case or reconsidering the order of dismissal. Signed by Judge Robert N. Scola, Jr. (kbe)

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