

DLD-012

NOT PRECEDENTIAL**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 23-2200

**MICHAEL CARTER,
Appellant**

v.

MEGAN HAYES, Probation Officer;**ADAMS COUNTY PROBATION DEPARTMENT**

**On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1:23-cv-00312)
District Judge: Honorable Yvette Kane**

**Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6****October 19, 2023****Before: JORDAN, PORTER, and PHIPPS, Circuit Judges****(Opinion filed November 6, 2023)**

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Michael Carter, proceeding *pro se* and *in forma pauperis*, appeals the order of the District Court dismissing his complaint. For the following reasons, we will summarily affirm the District Court's dismissal.

I

Carter filed a federal civil rights action as a convicted state prisoner against his former probation officer, Megan Hayes, and her employer, Adams County Probation Department, proceeding *pro se* and *in forma pauperis*. Broadly construed, the complaint alleges the following: on November 26, 2018, Carter appeared at a probation revocation hearing after failing a urinalysis test. When the presiding judge asked Hayes if Carter had received a drug and alcohol screening, Hayes falsely responded to the Judge that no such evaluation had taken place. Carter alleges that because of Hayes' false statement, the judge revoked his probation and returned him to prison instead of sending him to a rehabilitation facility. After he was released from prison, his drug addiction spiraled out of control, causing the vehicular homicide for which he is presently imprisoned and for which he blames Hayes. DC ECF 1. Carter seeks both damages and relief from his current sentence.

Pursuant to 28 U.S.C. § 1915A, Carter's complaint was screened by a magistrate judge, who recommended dismissal without leave to amend because both defendants were immune to suit, and because the complaint was barred by the statute of limitations. DC ECF 11. Carter filed objections in which he argued, *inter alia*, that because of the

continuing violation doctrine his complaint was not time-barred. DC ECF 21. The District Court adopted the Magistrate Judge's Report and Recommendation and dismissed the complaint without leave to amend. DC ECF 22. On appeal, Carter contends that the District Court erred when it dismissed his complaint without leave to amend. CA ECF 1.

II

We have jurisdiction pursuant to 28 U.S.C. § 1291. In considering a dismissal pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, we apply the same de novo standard of review as when reviewing dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir.2000).

We agree with the District Court that both defendants are protected by immunity. Probation Officer Hayes is protected by absolute witness immunity, as she was offering testimony in the context of a judicial proceeding. McArdle v. Tronetti, 961 F.2d 1083, 1085 (3d Cir. 1992); see also Briscoe v. LaHue, 460 U.S. 325, 345 (1983). Adams County Probation Department, meanwhile, enjoys complete sovereign immunity as an arm of the state. Haybarger v. Lawrence Cty. Adult Probation & Parole, 551 F.3d 193, 198 (3d Cir. 2008).

Even were that not the case, Carter's complaint is time barred. The statute of limitations for Carter's claim under 42 U.S.C. § 1983 is two years. Bougher v. University of Pittsburgh, 882 F.2d 74, 77-78. (3d. Cir. 1989). Carter filed his initial complaint in

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February 2023, more than four years after Probation Officer Hayes's testimony. DC ECF

1.

Carter argues that, under the continuing violation doctrine, the statute of limitations has not even begun to run because his incarceration is a continuing violation that has yet to end. He is mistaken: a continuing violation "is occasioned by continual unlawful acts, not continual ill effects from an original violation." Montanez v. Secretary Pennsylvania Dept. of Corrections, 773 F.3d 472, 480-81 (3d Cir. 2014) (cleaned up).

In light of the flaws in Carter's complaint, we agree with the District Court that allowing Carter leave to file an amended complaint would be futile. Grayson v. Mayview State Hosp., 293 F.3d 103, 106 (3d Cir. 2002).¹

III

For the foregoing reasons, the appeal does not present a substantial question, so we will summarily affirm the District Court's order. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

¹ To the extent that Carter is challenging his present incarceration, § 1983 is the wrong vehicle. In this case, the only means of relief in federal court would be a habeas corpus petition under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

Appendix B

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October 19, 2023

Before: JORDAN, PORTER, and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 19, 2023. On consideration whereof, it is now hereby

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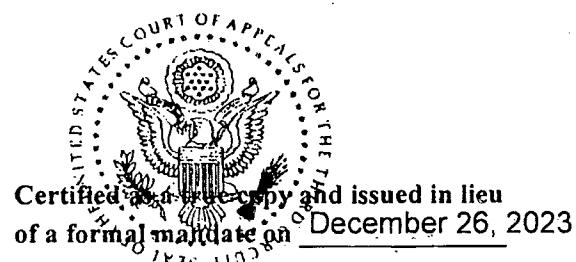
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ORDERED and ADJUDGED by this Court that the judgment of the District Court entered May 31, 2023, be and the same is hereby affirmed. Costs not taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit
Clerk

Dated: November 6, 2023



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL CARTER,	:	
Plaintiff	:	No. 1:23-cv-00312
 	:	
v.	:	(Judge Kane)
 	:	
MEGAN HAYES, Probation Officer, and	:	(Magistrate Judge Saporito)
ADAMS COUNTY PROBATION	:	
DEPARTMENT,	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On April 4, 2023, Magistrate Judge Saporito issued a Report and Recommendation (Doc. No. 11), recommending that the Court dismiss Plaintiff Michael Carter (“Plaintiff”)’s pro se complaint in this matter (Doc. No. 1) on the basis that the Court lacks subject matter jurisdiction over Plaintiff’s claim against Defendant Adams County Probation Department (“Defendant Probation”), which is immune from suit under the Eleventh Amendment as an arm of the state (Doc. No. 11 at 2), and because Defendant Probation Officer Megan Hayes (“Defendant Hayes”) is entitled to absolute immunity from Plaintiff’s claims based on allegedly false statements made by her during his probation violation hearing (*id.* at 3). Magistrate Judge Saporito recommends that the Court dismiss Plaintiff’s complaint with prejudice because any further leave to amend would be futile. (*Id.* at 4.)

Objections to the Report and Recommendation were due to be filed by April 21, 2023. On April 17, 2023, Plaintiff filed a motion requesting an extension of time to file objections. (Doc. No. 12.) The Court granted the motion (Doc. No. 13), making Plaintiff’s objections due by May 21, 2023. Plaintiff filed another request seeking an additional extension of time to file

objections (Doc. No. 15), which this Court also granted (Doc. No. 16), making Plaintiff's objections due by June 21, 2023. On May 25, 2023, Plaintiff filed objections to the pending Report and Recommendation (Doc. No. 21), as well as a motion for appointment of counsel (Doc. No. 20). In his objections, Plaintiff states that he "object[s] to the dismissal of my complaint" (Doc. No. 21 at 1), but offers no answer to the jurisdictional bar to his claim against Defendant Probation and the absolute immunity applicable to his claims against Defendant Hayes identified by Magistrate Judge Saporito in his Report and Recommendation.

AND SO, on this 31st day of May 2023, upon independent review of the record and the applicable law, **IT IS ORDERED THAT**:

1. The Court **ADOPTS** Magistrate Judge Saporito's Report and Recommendation (Doc. No. 11);
2. Plaintiff's objections (Doc. Nos. 21) are **OVERRULED**;
3. Plaintiff's complaint (Doc. No. 1) is **DISMISSED WITH PREJUDICE**;
4. Plaintiff's motion for appointment of counsel (Doc. No. 20) is **DENIED as moot**; and
5. The Clerk of Court is directed to **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL CARTER, #NR3968,

Plaintiff,

v.

MEGAN HAYES, Probation Officer,
et al.,

Defendants.

CIVIL ACTION NO. 1:23-cv-00312

(KANE, J.)
(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This is a federal civil rights action, brought under 42 U.S.C. § 1983 by a convicted state prisoner, Michael Carter, proceeding *pro se* and *in forma pauperis*. Carter asserts his claims against two defendants: (1) the Adams County Probation Department; and (2) Megan Hayes, a probation officer employed by the Adams County Probation Department.

The *pro se* complaint alleges that, on November 26, 2018, Carter appeared before a state court judge for a probation revocation hearing following a failed urinalysis test. At that hearing, the presiding judge asked Carter's probation officer, Hayes, whether she had gotten a drug and alcohol evaluation for Carter. Hayes allegedly lied to the judge, informing him that there was no such assessment when one had actually

been prepared. Carter alleges that, as a result of her false statement, instead of sending him to rehab, the judge revoked his probation and sent him to prison for a term of one to five years.

Carter was released from prison approximately one year later. As a result of having been denied the opportunity to participate in a rehab program the previous year, Carter alleges that his addiction got “out of control,” causing him to overdose twice and, ultimately, to kill another person while driving under the influence. He was convicted of vehicular homicide and is now serving a prison sentence of six years and nine months to 34 years. Carter alleges that *all* of this was caused by the allegedly false statement made by Hayes at his November 26, 2018, probation revocation hearing.

As an arm of the state, the Adams County Probation Department is immune from suit under the Eleventh Amendment to the United States Constitution. *See Haybarger v. Lawrence Cnty. Adult Probation & Parole*, 51 F.3d 193, 198 (3d Cir. 2008); *Howard v. Chester Cnty. Office of Juvenile Probation & Parole*, 396 F. Supp. 3d 490, 498 (E.D. Pa. 2019); *Benedict v. Sw. Pa. Hum. Servs., Inc.*, 98 F. Supp. 3d 809, 814 (W.D. Pa. 2015). Thus, this court lacks subject matter jurisdiction over the

plaintiff's claims against the county probation department. *See Blaniak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 693 n.2 (3d Cir. 1996) ("[T]he Eleventh Amendment is a jurisdictional bar which deprives federal courts of subject matter jurisdiction").

The plaintiff's probation officer, Hayes, is entitled to absolute immunity from claims based on allegedly false statements or testimony given during Carter's probation violation hearing. *See Briscoe v. LaHue*, 460 U.S. 325, 345 (1983) (concluding that witnesses are absolutely immune from claims for damages based on testimony); *see also Mee v. Ortega*, 967 F.2d 423, 429 (105h Cir. 1992); *Brandon v. Tillitson*, Civil Action No. 18-5643, 2019 WL 142377, at *5 (E.D. Pa. Jan. 9, 2019).¹ Moreover, even if the plaintiff's claims were not barred by absolute immunity, they would be barred by the applicable statute of limitations. *See Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 78–79 (3d Cir. 1989)

¹ The plaintiff appears to base his claim against Hayes solely on the allegedly false statements or testimony given by Hayes at his November 26, 2018, revocation hearing. To the extent his claims can be construed more broadly to also encompass the probation officer's preparation and communication of the pre-sentence report or recommendation she gave the court that day, such a claim would be barred by absolute immunity as well. *See Clark v. Conahan*, 737 F. Supp. 2d 239, 259 (M.D. Pa. 2010) ("Probation officers enjoy quasi-judicial immunity for participation in the preparation of pre-sentence reports.").

(holding that § 1983 civil rights claims are subject to Pennsylvania's two-year statute of limitations applicable to personal injury actions); *see also* 42 Pa. Cons. Stat. Ann. § 5524. Thus, the *pro se* complaint fails to state a claim upon which relief can be granted.

Accordingly, it is recommended that this action be dismissed for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1). Moreover, we recommend that the action be dismissed without leave to amend because, under the facts alleged, it is clear that any amendment would be futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

Dated: April 4, 2023

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL CARTER, #NR3968,

Plaintiff,

v.

MEGAN HAYES, Probation Officer,
et al.,

Defendants.

CIVIL ACTION NO. 1:23-cv-00312

(KANE, J.)
(SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated April 4, 2023. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified

proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: April 4, 2023

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

Appendix D

UNITED STATES COURT OF APPEALS
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ADAMS COUNTY PROBATION DEPARTMENT

On Appeal from the United States District Court
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District Judge: Honorable Yvette Kane

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE,
RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-
REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the
circuit in regular service not having voted for rehearing, the petition for rehearing by the
panel and the Court en banc, is DENIED.

APPENDIX D

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: December 15, 2023

Sb/cc: Michael Carter