

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-3218

JAMESON ROSADO,
Appellant

v.

JOSEPH A. DICKSON, Retired US Magistrate; MIKE KELLY, Carteret Police Officer; SGT. E. STENTELLA, Carteret Police Officer; JERRY SANSEVERINO, US Marshal Inspector; WILLIAM FEINGOLD, NJ Judge; HON. ALLEN COMBA, Carteret, NJ Municipal Court Judge; HON. COLLEEN FLYNN, NJ Superior Court Judge; KAITLYN MALTESE, Asst. Middlesex Cty. Prosecutor; STEPHEN TARDIFF, Clerk Carteret; US MARSHAL'S, other unidentified; WILLIAM HIGGINS, Carteret Police Officer

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2:22-cv-01274)
District Judge: Honorable John M. Vazquez

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 11, 2023

Before: HARDIMAN, PORTER, and FREEMAN, Circuit Judges

(Opinion filed: October 17, 2023)

OPINION*

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

PER CURIAM

Jameson Rosado appeals pro se from an order of the United States District Court for the District of New Jersey that sua sponte dismissed his claims under 28 U.S.C. § 1915(e)(2)(B) and denied as moot his motion to transfer venue. We will affirm.

Rosado is a former FBI employee who filed a previous civil action that is relevant to this one. In that previous action, Rosado challenged his termination from the FBI. The District Court entered summary judgment in favor of the defendants, and we affirmed. See Rosado v. Att’y Gen., 838 F. App’x 719 (3d Cir. 2021) (not precedential). Former Magistrate Judge Joseph A. Dickson presided over certain aspects of that case. After the District Court ruled, Rosado left at least one threatening voicemail message for Magistrate Judge Dickson, who, Rosado alleges, “summoned US Marshals to the Carteret NJ Police Department.” (ECF 2, at 6; Doc. 9, at 8-9.) In response to the voicemail, a U.S. Marshal’s agent and local police officers visited Rosado at his home. (Doc. 9-1, at 25-32.) Police officers arrested Rosado, charged him with harassment, and temporarily confiscated his firearms pursuant to the state’s Extreme Risk Protective Order Act of 2018. (Id. at 62-66.) Although details of Rosado’s criminal proceedings are not entirely clear, it appears that he ultimately pleaded guilty to a misdemeanor and is “permanently ban[ned]” from possessing firearms. (Doc. 9, at 5, 9-10.)

Rosado then filed pro se the civil action at issue here.¹ He initially named as defendants Magistrate Judge Dickson and the agent and officers involved in his arrest and firearms seizure. In two amended complaints, he also named as defendants the New Jersey judges and prosecutor involved in his prosecution. He asserted three general categories of claims. First, he claimed that his former federal action was wrongly decided, and he requested reopening of that action and consolidation with the underlying one. Second, he claimed that the defendant agent and officers violated his Second and Fourth Amendment rights by visiting his home and confiscating his firearms. Third, he claimed that the harassment charge was invalid and that his criminal proceeding was defective. The District Court granted Rosado's request to proceed in forma pauperis but dismissed his complaints under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim.² The District Court also denied as moot Rosado's motion to transfer venue to the United States District Court for the Southern District of New York. Rosado appeals pro se.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of a sua sponte dismissal for failure to state a claim pursuant to § 1915(e)(2)(B), like that of a dismissal

¹ Rosado filed the complaint in United States District Court for the Southern District of New York, which transferred the matter under 28 U.S.C. § 1406(a) to the United States District Court for the District of New Jersey. (ECF 4.)

² The District Court dismissed Rosado's initial complaint and amended complaint without prejudice to amendment and then dismissed his second amended complaint with prejudice.

on a party's motion under Federal Rule of Civil Procedure 12(b)(6), is de novo. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

To the extent that Rosado seeks to challenge the entry of summary judgment in his prior civil action, he may not do so now. As the District Court accurately explained, "his recourse (which [he] exercised) was to take an appeal in that matter." (ECF 14, at 3.) Moreover, judicial immunity bars Rosado's claims for damages based on alleged conduct and mistakes made by the judges who were involved in his prior civil action. See Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam) (stating that "[a] judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts"); see also Barrett v. Harrington, 130 F.3d 246, 259 (6th Cir. 1997) (holding "that in circumstances in which a judge reasonably perceives a threat to himself or herself arising out of the judge's adjudicatory conduct, the judge's response, be it a letter to a prosecutor or a call to the Marshall's [sic] office for security, is a judicial act within the scope of judicial immunity").

The District Court also properly rejected Rosado's Second and Fourth Amendment claims. He did not challenge the constitutionality of New Jersey's Extreme Risk Protective Order Act or squarely raise any other Second Amendment claim. And his Fourth Amendment claims were merely conclusory and remained so through all three iterations of his complaint. Further, although Rosado alleged in his initial complaint that officers entered his home without a warrant (ECF 2, at 6), he later stated that he invited

them inside and he attached to his first amended complaint copies of a Complaint Warrant and a Search Warrant. (ECF 9-1, at 33, 36.) He did not allege that the police obtained those warrants based on statements that they knew to be false or on statements that they made in reckless disregard of the truth. See Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993) (stating that “recovery under [a] Fourth Amendment seizure claim always requires proof that the defendant did not believe in the plaintiff’s guilt or recklessly disregarded the truth”). Rosado’s other claims arising from his criminal proceeding fail because success on them would necessarily imply the invalidity of his conviction, which has not been invalidated. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

Finally, the District Court did not abuse its discretion in denying as moot Rosado’s motion to transfer venue to the United States District Court for the Southern District of New York. See Stanifer v. Brannan, 564 F.3d 455, 456 (6th Cir. 2009) (reviewing for abuse of discretion a District Court’s decision not to transfer a case pursuant to § 1406(a)). After the District Court concluded that Rosado failed to state a claim under § 1915(e)(2)(B), there was no basis to transfer venue. See § 1406(a) (“The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”).

For the foregoing reasons, we will affirm the judgment of the District Court.

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v.

JOSEPH DICKSON, et al

(D.N.J. Civil No. 2-22-cv-01274)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by Appellant in the above-captioned 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.

By the Court,

s/ Arianna J. Freeman
Circuit Judge

Dated: November 21, 2023
Amr/cc: All counsel of record