APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES S. RENCHENSKI, Plaintiff	:	
v.	:	Case No. 3:23-cv-65-KAP
FREDRIC J. AMMERMAN, Defendant	:	

Report and Recommendation

Recommendation

The Clerk shall assign this matter to a District Judge with the reference back to me. The complaint should be dismissed for failure to state a claim.

Report

Plaintiff Renchenski is serving a life sentence imposed in the Court of Common Pleas of Clearfield County in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P. Clearfield). He has challenged that sentence in a habeas corpus petition in this court, *see* Renchenski v. Varano, Case No. 3:10-cv-217-KRG-KAP (W.D.Pa. April 30, 2015), *certificate of appealability denied sub nom.* Renchenski v. Superintendent Coal Township SCI, No. 15-2252 (3d Cir. December 4, 2015), *cert. denied sub nom.* Renchenski v. Mooney, 137 S.Ct. 338 (No. 16-5632, October 17, 2016). *See also* Renchenski v. Varano, Case No. 3:10-cv-217-KRG-KAP (W.D.Pa. September 29, 2017)(denying Rule 60(b) motion to vacate), *certificate of appealability denied sub nom.* Renchenski v. Superintendent Coal Township SCI, No. 17-3259 (3d Cir. January 23, 2018), *cert. denied sub nom.* Renchenski v McGinley, 139 S.Ct. 417 (No. 18-5672, October 29, 2018).

Plaintiff currently has a second habeas petition pending in this Court at Renchenski v McGinley, Case No. 3:23-cv-38-KRG-KAP (W.D.Pa.), which I have recommended be dismissed as an unauthorized second or successive habeas petition. The complaint in this matter, which plaintiff is prosecuting *in forma pauperis*, seeks money damages against the current President Judge of the Court of Common Pleas of Clearfield County, for his allegedly improper handling of plaintiff's collateral attack on the sentence in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P. Clearfield) in that court. Plaintiff describes defendant's rulings at Complaint ¶¶7-19 (some paragraphs are misnumbered; defendant's last alleged action (assuming that June 23, 2012 is a typo for June 23, 2021) is at the paragraph numbered ¶18: defendant dismissed what plaintiff alleges is a state habeas corpus petition as a second and successive PCRA petition.

The Prison Litigation Reform Act's screening requirements for litigants proceeding

in forma pauperis are set out at 28 U.S.C.§ 1915(e)(2):

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

See also 28 U.S.C.§ 1915A. This complaint fails to state a claim.

Plaintiff's complaint is not ripe. In evaluating the complaint "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." Heck v. Humphrey, 512 U.S. 477, 487 (1994). *See also* Kossler v. Crisanti, 564 F.3d 181, 192 (3d Cir. 2009) (*en banc*). The plaintiff's claim of injury, Complaint at ¶31, is that "he has been forced to spend more time unlawfully confined." This necessarily implies the invalidity of plaintiff's conviction and sentence. As plaintiff recognizes, his conviction and sentence are currently in effect. He has no claim until he has them invalidated: otherwise the defendant's actions have caused him and can cause him no injury.

Plaintiff cannot proceed even if he has his conviction and sentence overturned. Under a consistent line of cases (acknowledged by plaintiff in the Memorandum he submitted in support of his complaint) including Stump v. Sparkman, 435 U.S. 349, 359 (1978), a judge is absolutely immune from suit, not just immune from the ultimate assessment of damages for judicial acts, even if those acts are as in Stump v. Sparkman "flawed by the commission of grave procedural errors," or as alleged in Mireles v. Waco, 502 U.S. 9, 11, (1991), the product of "bad faith or malice." Judicial immunity does not apply to a judge's nonjudicial acts, or to judicial acts taken in the complete absence of all jurisdiction. But neither of those exceptions is plausibly alleged here. Plaintiff's theory, as explained in his Memorandum at 9-29, is that because the defendant dismissed the plaintiff's habeas petition as barred by the jurisdictional bar on second and successive PCRA petitions, the defendant acted in absence of all jurisdiction. Second, as explained in plaintiff's Memorandum at 29-36, because the defendant discussed the procedural history of plaintiff's conviction and sentence in the course of ruling that the habeas petition was a barred PCRA petition, the defendant undertook "investigative acts" which are nonjudicial acts and therefore not clothed with immunity.

The law is well settled:

> First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Forrester v. White, 484 U.S. [219, 227–229 (1988)]; Stump v. Sparkman, 435 U.S. [349, 360 (1978)]. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. [Stump v. Sparkman, 435 U.S. at 356–357], Bradley v. Fisher, 13 Wall. [335, 351 (1872)].

Mireles v. Waco, 502 U.S. at 11–12. It is also well settled that plaintiff's assertions that defendant's actions were taken in absence of jurisdiction or constituted nonjudicial acts are conclusions of law, not allegations of fact, and not entitled to any presumption of accuracy. The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

There is no question that judges, especially judges of courts of general jurisdiction, are clothed with enormous power and that this can be misused. Error does not strip a judge of immunity. In Stump v. Sparkman, a judge's approval of an application to sterilize a minor not even given notice of the proceeding was a judicial act within that judge's jurisdiction; in Mireles v. Waco, a judge's alleged order to police officers to seize a defense attorney from another courtroom and to forcibly bring him into the judge's courtroom by slamming him through doors and gates was a judicial act within that judge's jurisdiction. So long as the act is a "function normally performed by a judge," *id.*, 502 U.S. at 13, it does not matter if the act is incorrect, even outrageously incorrect. An excellent contrast with Mireles v. Waco is given in Zarcone v. Perry, 572 F.2d 52, 53 (2d Cir.1978). There, a judge who thought a street vendor's coffee tasted "putrid" and ordered police officers to bring the coffee vendor "in front of me in cuffs" was not performing a judicial act. Likewise, a judge who improperly berates a litigant in the courtroom is immune for such behavior, while a judge who inflicts emotional distress on a person making a personal visit is not engaged in judicial action. Langella v. Cercone, 34 A.3d 835 (Pa.Super. 2011).

What are judicial acts and what are acts taken in the absence of jurisdiction, in other words, is determined by reference their relationship to the general business of the court and not to the correctness of the individual acts. As noted in Stump v. Sparkman, a probate judge with jurisdiction over only wills and estates who tries a criminal case is acting in the clear absence of jurisdiction, but a judge of a criminal court who convicts a defendant of a nonexistent crime is merely acting in excess of jurisdiction. 435 U.S. at 357 n.7. A judge acting as an employer is not engaged in judicial acts, Forrester v. White, 484 U.S. 219 (1988), but a judge who makes an erroneous ruling is clearly acting as a judge. The defendant, the President Judge of the Court of Common Pleas of Clearfield County, by ruling on a collateral attack filed in that court challenging a conviction in that court, was clearly performing a judicial act within his jurisdiction.

As for the vague allegations that the defendant's actions in conducting research or familiarizing himself with the facts of the case were nonjudicial "investigative acts," Rule 8(a)(2) requires plaintiff to plead facts that state a claim within this court's jurisdiction that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Plaintiff does not plausibly allege that defendant acted in a nonjudicial investigative capacity by presiding over and ruling on his habeas petition or by characterizing it as a jurisdictionally barred PCRA petition. *See generally* Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 770 (3d Cir. 2000)(judge's release of a confidential court record in violation of court rule, *ex parte*, and solely to discredit plaintiff "does not mean [the] act was not judicial.")

The Court of Appeals, in Grayson v. Mayview State Hospital, 293 F.3d 103 (3d Cir.2002) and similar cases, directs district courts to allow plaintiffs in civil rights cases leave to amend deficient complaints unless that amendment is "futile" or "inequitable." That does not permit a court to assume there must be a federal claim out there and all the plaintiff needs is enough do-overs to state it. That would be inequitable because it would be advocacy on behalf of the plaintiff. A plain reading of the complaint is that plaintiff is suing an immune defendant, and that amendment is futile. For an appellate ruling to that effect, *see* Bond v. DiClaudio, No. 22-3010, 2023 WL 1990532, at *1 (3d Cir. Feb. 14, 2023).

Pursuant to 28 U.S.C.§ 636(b)(1), the parties can within fourteen days file written objections to my recommendation. In the absence of timely and specific objections, any appeal would be severely hampered or entirely defaulted. See EEOC v. City of Long Branch, 866 F.3d 93, 100 (3d Cir. 2017) (describing standard of appellate review when no timely and specific objections are filed as limited to review for plain error).

DATE: May 24, 2023

Keith A. Pesto,
United States Magistrate Judge

Notice by U.S. Mail to:

Charles S. Renchenski AP-8124
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA 17866

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES S. RENCHENSKI,	)	Case No. 3:23-cv-65
	)	
Plaintiff,	)	JUDGE KIM R. GIBSON
	)	
v.	)	
	)	
FREDRIC J. AMMERMAN,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

On May 24, 2023, pro se plaintiff Charles S. Renchenski ("Plaintiff") filed a complaint against defendant Frederic J. Ammerman ("Defendant"). (ECF No. 8).[1] On the same date, Magistrate Judge Pesto entered a Report & Recommendation ("R&R") recommending sua sponte that the complaint be dismissed with prejudice for failure to state a claim. (ECF No. 12). On June 6, 2023, Plaintiff filed timely written objections thereto. (ECF No. 14). The Court has reviewed these objections and finds them meritless.

Accordingly, upon de novo review of the above filings, the following order is entered:

NOW, this 10th day of July, 2023, **IT IS HEREBY ORDERED** that Magistrate Judge Pesto's R&R at ECF No. 12 is **ADOPTED** as the Opinion of the Court for its reasoning and conclusion.

[1] Plaintiff also filed a memorandum in support of his complaint on the same date. (ECF No. 9).

IT IS FURTHER ORDERED that the complaint at ECF No. 8 is **DISMISSED WITH PREJUDICE.** The Clerk of Court is directed to mark this case as closed.

BY THE COURT:

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

Notice by U.S. mail to:

Charles S. Renchenski
AP8124
SCI Coal Township
1 Kelley Drive
Coal Township, PA 17866

APPENDIX

"B"

CLD-071 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2519

CHARLES S. RENCHENSKI,
Appellant

v.

FREDERIC J. AMMERMAN

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 3:23-cv-00065)
District Judge: Honorable Kim R. Gibson

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
February 15, 2024
Before: KRAUSE, FREEMAN, and SCIRICA, *Circuit Judges*

(Opinion filed March 1, 2024)

OPINION*

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* 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

Charles S. Renchenski, a Pennsylvania prisoner, appeals pro se from an order of the United States District Court for the Western District of Pennsylvania that sua sponte dismissed his complaint with prejudice for failure to state a claim. Because the appeal does not present a substantial question, we will summarily affirm.

Renchenski filed a complaint against Fredric J. Ammerman, the Pennsylvania Court of Common Pleas judge who dismissed as untimely Renchenski's second Post-Conviction Relief Act (PCRA) petition. (ECF 1-2.) Renchenski later filed an identical complaint (ECF 8) and a supporting a memorandum of law (ECF 9), alleging that Judge Ammerman acted "in clear absence of all jurisdiction . . . . [by] address[ing] the merits of [the] underlying claims after he adjudged the [PCRA] filing untimely." (ECF 8, at 4 of 10.) He also complained that Judge Ammerman "performed . . . personal investigations, provided potential defenses for the [Commonwealth,] and cited to legal authorities to support his defense theories." (ECF 9, at 27 of 41.) Renchenski sought only damages. (ECF 8, at 8-9 of 10.)

The matter was referred to a Magistrate Judge, who concluded that Renchenski's claims were barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), and, alternatively, that Judge Ammerman was entitled to judicial immunity. (ECF 12, at 2-4 of 4.) The Magistrate Judge also determined that amendment of the complaint would be futile. (*Id.* at 4.) Over Renchenski's objections (ECF 14), the District Court adopted the

Magistrate Judge's Report and Recommendation and dismissed the complaint with prejudice. (ECF 15.) Renchenski timely appealed. (ECF 16.)

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of a sua sponte dismissal for failure to state a claim, like that of a dismissal 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). We may summarily affirm a decision of the District Court if the appeal does not raise a substantial question. 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

The District Court properly determined that Judge Ammerman was entitled to immunity.[1] Judges are generally immune from civil suits for money damages for actions taken in their judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 9, 11 (1991) (per curiam). Renchenski's amended complaint focused on alleged errors in Judge Ammerman's adjudication of Renchenski's second PCRA petition. That adjudication clearly was a judicial act. *See Barrett v. Harrington*, 130 F.3d 246, 255, 257 (6th Cir. 1997) (holding that acts of adjudication, including the rendering of judgments and orders, are judicial acts).

Although immunity does not apply if the judge is sued for nonjudicial actions or actions "taken in the complete absence of all jurisdiction," *Mireles*, 502 U.S. at 11-12, neither exception applies here. Renchenski asserted that Judge Ammerman acted in the absence of jurisdiction because he performed "personal investigative acts" (ECF 9, at 29),

[1] In light of this conclusion, we need not address the District Court's alternative determination that Renchenski's claims were barred by *Heck*.

and because, after determining that the second PCRA petition was untimely, his opinion addressed the merits of the underlying claims. (ECF 8, at 4.) Renchenski's arguments are unavailing. The "personal investigative acts" cited by Renchenski apparently refer to Judge Ammerman's research into, and application of, relevant facts and law. (ECF 9, at 27; ECF 14, at 12-13 of 17.) There is no doubt that such acts were taken in Judge Ammerman's judicial capacity. *See Christensen v. Ward*, 916 F.2d 1462, 1477-78 (10th Cir. 1990) (holding that judges were entitled to judicial immunity in connection with their research, interpretation, and application of law). Similarly, Judge Ammerman's decision to address the merits of Renchenski's claims in the alternative is judicial in nature. *Cf. Taylor v. West Publ'g Co.*, 693 F.2d 837, 838 (8th Cir. 1982) (per curiam) (affirming District Court's conclusion that writing an opinion was a judicial act).

In sum, the District Court did not err in dismissing Renchenski's complaint based on Judge Ammerman's immunity. Furthermore, we agree that amendment of Renchenski's complaint would be futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002). Accordingly, we will summarily affirm the judgment of the District Court.[2]

[2] We note that in an "Appeal Brief" attached to Renchenski's notice of appeal, he argued that the Magistrate Judge and District Court Judge should have been recused from adjudicating his case. (ECF 16, at 7, 9-16.) Renchenski's conclusory allegations about adverse legal rulings fail to demonstrate that recusal is warranted. *See Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000).

CLD-071

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2519

CHARLES S. RENCHENSKI,
Appellant

v.

FREDERIC J. AMMERMAN

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 3:23-cv-00065)
District Judge: Honorable Kim R. Gibson

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
February 15, 2024
Before: KRAUSE, FREEMAN, and SCIRICA, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on February 15, 2024. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 10, 2023, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: March 1, 2024

Certified as a true copy and issued in lieu of a formal mandate on May 30, 2024

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2519

CHARLES RENCHENSKI,
Appellant

v.

FREDERIC AMMERMAN

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 3-23-cv-00065)

SUR PETITION FOR REHEARING

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

May 22, 2024

* Judge Scirica's vote is limited to panel rehearing.

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