24-5542 ORIGINAL

Supreme Court
Of The United States

Docket No. 23-7276

Timothy Allen Honea
Petitioner

V.

Fred Webb, Bob Boykin, Robert Sharpe,
C. Winston Gilchrist
Respondents

Petition for Writ of Certiorari

Timothy Honea
Petitioner

I. Questions Presented

Are public defenders Fred Webb, Bob Boykin, and Robert Sharpe, People Acting under color of law?

Was Superior Court Judge C. Winston Gilchrist out of his Jurisdiction when he failed to rotate pursuant to the Constitution and laws of North Carolina?

Was it appropriate for the United States District Court and the United States Court of Appeals to ignore a state wide failure of the public defender system and a flagrant exploitation of that system failure by a North Carolina Superior Court Judge and three public defenders?

Should the District Court have allowed the petitioner to amend his complaint?

Should the Court of Appeals have allowed the petitioner an extension of time for a Petition for Rehearing en banc?

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Appendices

The petitioner is a pretrial detainee being held at central prison awaiting trial which is scheduled for July 15th 2025. Honea has requested that copies of the lower court decisions and pleadings be copied so that he can supply them with this application. However Warden James, Unit 2 managers Outlaw, Hudson, and Jeuhres all have ignored Honeas request for copies for months. Honea has also requested that Prisoner legal services at central Prison copy the lower court documents but they claim that it is against N.C.D.A.C. policy to make copies for inmates. Therefore, Honea can not supply the necessary documents. However, if this court were to order the lower courts to produce the files of this case, the documents that would be most helpful in deciding this matter would be:

1. The Order and Recommendation of the United States magistrate Judge dated November 2nd 2023.
2. Plaintiffs Objections to the Order and Recommendation of United States magistrate Judge dated November 16th 2023.

3. Judgement and order dated November 28th 2023.
4. Appellant Brief dated January 2nd 2024.
5. Appeal denial dated April 16th 2024.
6. motion for extension of time to file application for rehearing en banc dated April 25th 2024.
7. motion for extension of time to file application for rehearing en banc denial dated may 1st 2024.

Table of Authorities Cited

Cases

Mireles v. Waco, 502 U.S. 9, 112 S.ct. 286, (1991)

Safer v. Melo, 502 U.S. 21, 30-31, 112 S.ct. 358 (1991)

Vermont v. Brillon, 556 U.S. 81, 129 S.ct. 1283, (2009)

Holshouser v. Scott, 335 F. Supp. 928, MDNC, (1971)

Gomez v. USAA Federal sav Bank, 171 F.3d 794, 1999 WL 170062 (2d cir 1999)

Baker v. Varser, 239 N.C. 180, 79 S.E. 2d 757 (SCNC 1954)

Vance Const. CO., Inc. v. Duane white land corp, 127 N.C. APP. ~~418~~ 493, 490 S.E. 2d 588, (1997)

Statutes

North Carolina Constitution Article IV § 11

NC GS 7A-47 3 (a) FRAP Rule 26 (b)

II. Jurisdiction

The date on which the United States Court of appeals decides this case NO. 23-7276 was April 16th 2024.

The order of the United States Court of appeals dated April 16th 2024, was not delivered to the petitioner until April 25th 2024. Because of the 10 day delay, the petitioner filed a motion for an extension of time on April 25th 2024. On may 1st 2024, the petitioner filed a petition for rehearing en banc. Also on may 1st 2024, The United States Court of Appeals denied the petitioners motion for an extension of time.

The petitioner Timothy Allen Honea seeks to have the order dated April 16th 2024 by the fourth Circuit Court of Appeals in case No. 23-7276 reviewed by this court.

The Jurisdiction of this court is invoked under 28 USC § 1254(1).

Statement of the Case.

Timothy Honea filed this case on September 19th 2023. The complaint alleges that Judge Gilchrist Flagrantly violated Honeas constitutional rights by denying him bond and denying him a speedy trial. Gilchrist did this by forcing a court appointed attorney on Honea against his objections. Gilchrist then ignored all of Honeas ProSe motions and used the excuse that Honea had an attorney. Gilchrist, Webb, Boykin, and Sharpe Flagrantly exploited a failure of the Public Defender system with the intent of depriving Honea of his Constitutional rights, then used immunity as a shield against liability. On November 2nd 2023, this instant case was assigned to Magistrate Judge Elizabeth Peake who then recommended that it be dismissed. On November 16th 2023, Honea filed his objections to Judge Peak's recommendations and on November 28th 2023, Judge Lorretta

C. Biggs ordered that the case be dismissed. On December 11th 2023, Honea filed notice of appeal and on April 16th 2024, Honeas appeal was denied. Honea did not receive notice of the appeal denial until April 25th 2024, and because the delay severely limited his ability to respond, he filed a motion for an extension of time on that same day, April 25th 2024. Honea then filed a petition for a rehearing enbanc on May 1st 2024. However, once again Honea's legal mail was delayed and on May 9th 2024, Honea received an order denying his motion to extend time. This order was signed and mailed on May 1st 2024. Honea then filed this Petition for Writ of Certiorari contesting the order of the Court of appeals for the Fourth Circuit issued on April 25th 2024, and their denial of Honea's motion for extension of time dated may 1st 2024.

Reasons for Granting the Petition

The United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the District court, as to call for an exercise of this courts supervisory power; and the United States Court of Appeals has decided an important Federal question in a way that conflicts with relevant decisions of this court such as Mireless v. Waco, Stump v. Sparkman, Vermont v. Brillon, and Safer v. Melo.

Argument

In the State of North Carolina there is a state wide failure of the public defender system caused by a lack of funding by the state. This failure is causing long periods of pretrial incarceration and high conviction rates for thousands of people state wide. On July 17th

2023, regional defender Kevin Boxberger was featured on W.R.A.L. News where he testified on television that there was a state wide failure of the public defender system caused by lack of funding by the state legislature. This news article can be viewed at (WRAL.com/amp/20958413/). The petitioner requests that Judicial notice be taken of the fact that there is a state wide failure of the North Carolina Public Defender system. In this instant case, Judge Gilchrist forced a public defender on Honea against his objections. Gilchrist, Webb, Boykin, and Sharpe then Flagrantly exploited the failure of the system in order to deny Honea of his right to bond and his right to a speedy trial by ignoring Honeas Prose motions under the premise that he had an attorney and therefore could not make his own motions. The defendants in this instant case believed they were above the laws of North Carolina and the United States because they believe they

immune from liability. However, in Vermont v. Brillon, 556 U.S. 81, 129 S.Ct. 1283, (2009) Justice Ginsburg stated, "for a total of some six months of the time that elapsed between Brillons arrest and his trial, Brillon lacked an attorney. The state may be charged with these months if the gaps resulted from the trial courts failure to appoint replacement counsel with dispatch. Similarly, the state may bear responsibility if there is a break down in the Public Defender System."

This is an issue that effects the Constitutional rights of the entire state of North Carolina and not just the rights of Honea alone.

The 3 public defenders were sued in their individual capacities. Safer v. Melo, 502 U.S. 21, 30-31, 112 S.Ct. 358, 364-365, (S.Ct 1991) "holding that state officials, when sued in their individual capacities are "Persons" within the meaning of §1983 and therefore are not immune under the 11th amendment."

In North Carolina, Superior Court Judges are required to rotate every six months by the Constitution of North Carolina Article IV § 11, and by GS 7A-47.3 (a). Superior Court Judge C. Winston Gilchrist has refused to rotate as if the laws of North Carolina do not apply to him. In Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286, (1991) "Immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for non judicial actions not taken in the Judges official capacity." In Mireles, judge Mireles ordered a sheriff deputy to use force to bring an attorney to his court room. This was determined by the Supreme Court to be outside his judicial capacity for the simple reason that it was illegal. In this instant case, Judge Gilchrist has been in violation of the law of North Carolina for years and therefore, was not acting in his Judicial capacity when he violated Honea's Constitutional Rights while out of his jurisdiction and assigned

to a different district which he refused to rotate to pursuant to North Carolina law. The second circumstance described in Mireles v. Waco, is lack of jurisdiction. "a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction." When judge Gilchrist refused to rotate, he was not only in violation of North Carolina law, he was also acting outside his jurisdiction. When Gilchrist forced a court appointed attorney on Honea he was assigned to Wake County, not Lee County. When he ordered Honea to central Prison in retaliation for a pro se motion to recuse him, he was assigned to Wake County, not Lee County. The requirement to rotate is confirmed in Holshouser v. Scott, 335 F. Supp. 928, MDNC, (1971) and more recently in Vance Const. CO., Inc. V, Duane White land corp, 127 N.C. App. 439, 490 S.E. 2d 588 (1997) and again in Baker v. Varser, 239 N.C. 180, 79 S.E. 2d 757, (S.C.N.C. 1954) In Vance Const. CO., Inc. V. Duane White land Corp, 127 N.C. APP. 493, 490 S.E. 2d 588, (1997)

Not only is the constitutional and statutory requirement to rotate confirmed, but it is stated that failure to rotate results in lack of jurisdiction. "We therefore take judicial notice of the following: During September of 1996, judge Brown was assigned to district 7B, which included Edgecombe County. At that time he was not assigned to hold an session of Superior Court in Warren County, located in district 9. The instant case had not been designated as exceptional with judge Brown assigned to hear the same pursuant to Rule 2.1 of the General rules of practice for the Superior and District courts. Because judge Brown had no commission from the Chief Justice or other authorization to hold a session of Superior court in Warren county or District 9 during the week plaintiffs motion was heard, the order entered is void."

In Baker v. Varser, 239 N.C. 180, 79 S.E. 2d 757, (S.C.N.C. 1954) "It is irrelevant that the parties consented to the motion being heard in Edgecombe

county, as subject matter jurisdiction can not be conferred upon a court by consent, waiver, or estoppel." "In this situation, did judge Harris have jurisdiction to enter a petition for, and to grant a writ of mandamus in this instant action? The Constitution and laws of North Carolina say no." "As to him, it is limited, ordinarily, to the district to which he is assigned by statute. It may not be exercised even within the district of his residency except when specially authorized by statute." In this instant case, judge Gilchrist simply refused to comply with the law and constitution of North Carolina. The instant case had not been declared extraordinary, nor had it been declared in chambers or on Holiday. By refusing to rotate pursuant to the laws of North Carolina, he is able to control who gets bond and other constitutional Rights such as speedy trial. This issue effects the entire state of North Carolina and therefore should not have been dismissed as a trivial issue.

The petitioner should have been allowed to amend his complaint. It was a mere clerical error that money damages were asked for against Judge Gilchrist in one of the claims for relief. Honea is entitled to amend his complaint once as a matter of course. .GS 15a .1. (a)

Gomez V. USAA Federal Sav. Bank, 171 F-3d 794, 1999 WL 170062, (1999) " Because the district court did not give the Prose litigant an opportunity to amend his complaint, and because we can not rule out the possibility that such an amendment will result in a claim being successfully pleaded, we vacate the judgement and instruct the district court to permit the plaintiff to amend the complaint." An amendment of the complaint in this instant case could have resulted in a successfully litigated case. Also, it was error for the District court to dismiss the entire complaint when only one of the five claims for relief requested money damages against him.

The petitioner should have been granted an extension of time to file a petition for rehearing en banc. The court of appeals denied Honeas appeal on April 16th 2024, but Honea did not receive notice of the ruling until April 25th 2024. A petition for rehearing was due on April 29th and because of the delay that was beyond Honeas control, he should have been granted an extension of time pursuant to Federal Rules of Appelate Procedure Rule 26(b).

Opposing Counsel

This case was dismissed during the screening process. No summons was ever issued and no defendants were ever served. No opposing counel has ever presented themselves.

Conclusion

For the foregoing reasons, the Petitioner requests that a writ of certiorari be issued in

this matter to determine if this matter should be remanded back to the District Court or remanded back to the Court of Appeals for rehearing en banc.

Executed this 5th day of September, 2024.

Timothy Allen Honea
Central Prison
4285 mail service center
Raleigh NC 27699-4285

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TIMOTHY ALLEN HONEA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:23CV829
	)	
FRED WEBB, et al.,	)	
	)	
Defendant(s).	)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, Timothy Allen Honea, a pretrial detainee facing criminal charges in Lee County, North Carolina, submitted a *pro se* complaint under 42 U.S.C. § 1983 and requests permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Plaintiff names as Defendants: 1) Fred Webb, who is Plaintiff's appointed defense attorney, 2) Bob Boykin, who is a private investigator appointed by the North Carolina Capital Defenders Office to aid Plaintiff's defense, 3) Robert Sharp, who is the director of that office, and 4) North Carolina Superior Court Judge C. Winston Gilchrist, who has handled proceedings in Plaintiff's pending case. Plaintiff claims that all Defendants violated his rights by mishandling his case in various ways. He seeks damages, the recusal of Judge Gilchrist from his case, and an order that the Lee County District Attorney hold a new bond hearing in front of a different judge.

Because Plaintiff is "a prisoner seek[ing] redress from a governmental entity or officer or employee of a governmental entity," this Court has an obligation to "review" this Complaint. 28 U.S.C. § 1915A(a). "On review, the court shall . . . dismiss the complaint,

or any portion of the complaint, if [it] – (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

As to the first basis for dismissal, the United States Supreme Court has explained that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). "The word 'frivolous' is inherently elastic and not susceptible to categorical definition. . . . The term's capaciousness directs lower courts to conduct a flexible analysis, in light of the totality of the circumstances, of all factors bearing upon the frivolity of a claim." Nagy v. Federal Med. Ctr. Butner, 376 F.3d 252, 256-57 (4th Cir. 2004) (some internal quotation marks omitted).

Alternatively, a plaintiff "fails to state a claim upon which relief may be granted," 28 U.S.C. § 1915A(b)(1), when the complaint does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations omitted) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Id. In other words, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal

conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id.[1]

As part of this review, the Court may anticipate affirmative defenses that clearly appear on the face of the complaint. Nasim v. Warden, Md. House of Corr., 64 F.3d 951, 954 (4th Cir. 1995) (en banc); Todd v. Baskerville, 712 F.2d 70, 74 (4th Cir. 1983).

The final ground for dismissal under 28 U.S.C. § 1915A(b)(2) generally applies to situations in which doctrines established by the United States Constitution or at common law immunize governments and/or government personnel from liability for monetary damages. See, e.g., Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984) (discussing sovereign immunity of states and state officials under Eleventh Amendment); Pierson v. Ray, 386 U.S. 547 (1967) (describing interrelationship between 42 U.S.C. § 1983 and common-law immunity doctrines, such as judicial, legislative, and prosecutorial immunity).

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[1]Although the Supreme Court has reiterated that "[a] document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted), the United States Court of Appeals for the Fourth Circuit has "not read Erickson to undermine Twombly's requirement that a pleading contain more than labels and conclusions," Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (internal quotation marks omitted) (applying Twombly standard in dismissing pro se complaint); accord Atherton v. District of Columbia Off. of Mayor, 567 F.3d 672, 681-82 (D.C. Cir. 2009) ("A *pro se* complaint . . . 'must be held to less stringent standards than formal pleadings drafted by lawyers.' But even a *pro se* complainant must plead 'factual matter' that permits the court to infer 'more than the mere possibility of misconduct.'" (quoting Erickson, 551 U.S. at 94, and Iqbal, 556 U.S. at 697, respectively)).

For the reasons that follow, the Complaint should be dismissed pursuant to 28 U.S.C. § 1915A(b) because it fails to state a claim on which relief may be granted and because it seeks monetary damages from a defendant with immunity from such relief.

The Court first notes that Plaintiff names the judge handling his criminal case as a Defendant based on his actions in the case. Judges have absolute immunity for their judicial actions. Stump v. Sparkman, 435 U.S. 349 (1978). Plaintiff's complaint against Defendant Gilchrist should therefore be dismissed. To any extent that Plaintiff requests injunctive relief, he asks that the Court order Defendant Gilchrist to recuse himself from Plaintiff's criminal case and order the prosecutor to hold a bail hearing in front of another judge. However, this Court does not control the recusals of state court judges or the setting of bond or bond hearings in the state courts. Further, the prosecutor is not a party to this action and, therefore, not subject to court orders entered in the case. Accordingly, Plaintiff's request for injunctive relief also fails and should be dismissed.[2]

Plaintiff also names defense attorneys as Defendants. However, defense attorneys do not act "under color of" state law and are, therefore, not amenable to suit under § 1983 whether they are privately retained, Deas v. Potts, 547 F.2d 800, 800 (4th Cir. 1976),

[2] To the extent that Plaintiff seeks to challenge the constitutionality of his custody, he would need to do so through the filing of a petition for habeas corpus under 28 U.S.C. § 2241 after exhausting any available remedies in the state courts. Further, he should be aware that such intervention in a state court criminal proceeding is not ordinarily appropriate and can only occur in instances of bad faith, irreparable injury beyond the burden of defending the criminal action, or a lack of available state court remedies. See Younger v. Harris, 401 U.S. 37 (1971); Gilliam v. Foster, 75 F.3d 881, 904-905 (4th Cir. 1996). The Court can consider those issues further if Plaintiff files a Petition under § 2241.

appointed by the state, Hall v. Quillen, 631 F.2d 1154, 1155-56 (4th Cir. 1980), or employed as a public defender, Polk County v. Dodson, 454 U.S. 312, 324 (1981). The same is true for Defendant Boykin who was also a private party appointed to aid Plaintiff's defense attorney. For this reason, Plaintiff cannot pursue these claims via § 1983 and, if he has a remedy against Defendants Webb, Sharpe, and Boykin, he must find it under the appropriate state law.

As a result, Plaintiff's request to proceed *in forma pauperis* should not be authorized, with the exception that *in forma pauperis* status shall be granted for the sole purpose of entering this Order and Recommendation. Plaintiff has submitted the Complaint for filing, however, and, notwithstanding the preceding determination, § 1915(b)(1) requires that he make an initial payment if funds are available. The *in forma pauperis* application reflects that Plaintiff has no funds with which to make a payment. Therefore, the Court will not order an initial payment, but will instead order that Plaintiff's custodian withdraw funds as they become available.

IT IS THEREFORE ORDERED that *in forma pauperis* status be granted for the sole purpose of entering this Order and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's trust officer shall be directed to pay to the Clerk of this Court 20% of all deposits to his account starting with the month of November of 2023, and thereafter each time that the amount in the account exceeds $10.00 until the $350.00 filing fee has been paid.

IT IS RECOMMENDED that this action be dismissed pursuant to 28 U.S.C. § 1915A for failing to state a claim upon which relief may be granted, as well as for seeking monetary relief against a defendant who is immune from such relief.

This, the 2nd day of November, 2023.

/s/ Joi Elizabeth Peake
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TIMOTHY ALLEN HONEA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:23CV829
	)	
FRED WEBB, *et al.*,	)	
	)	
Defendant(s).	)	

JUDGMENT

For the reasons set out in an Order filed contemporaneously with this Judgment,

IT IS THEREFORE ORDERED AND ADJUDGED that this action be **DISMISSED** pursuant to 28 U.S.C. § 1915A for failing to state a claim upon which relief may be granted, as well as for seeking monetary relief against a defendant who is immune from such relief.

This, the 28th day of November 2023.

/s/ Loretta C. Biggs
United States District Judge