

EXHIBIT "A"

RULING FROM FEDERAL COURT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

Newport News Division

BENJAMIN JACOB STRATTON,

Plaintiff,

ACTION NO.

v.

4:17cv46

COMMONWEALTH OF VIRGINIA

D/B/A: Catheryn K. Clemens

Michael L. McGinty,

Defendant.

DISMISSAL ORDER

On May 11, 2017, Plaintiff Benjamin Jacob
Stratton ("Plaintiff"), appearing *pro se*, filed a

Complaint in which he named the “Commonwealth of Virginia D/B/A: Catheryn K. Clemens, Michael L. McGinty” as Defendant. Compl., ECF No. 1. This matter is before the Court on dismissal motions filed by Mr. McGinty and Ms. Clemens. McGinty Mot. To Dismiss, ECF No. 5; Clemens Mot. To Dismiss, ECF No. 10. The Court concludes that oral argument is unnecessary because the facts and legal arguments are adequately presented in the parties’ briefs. For the reasons set forth below, Mr. McGinty’s Motion to Dismiss, ECF No. 5, is **GRANTED**, and Ms. Clemons’ Motion to Dismiss, ECF No. 10, is **GRANTED**.

I. Background

Plaintiff characterizes his lawsuit as one brought pursuant to 42 U.S.C. § 1983. Compl. At 1, ECF No. 1. In his Complaint, which is nearly impossible to decipher, Plaintiff appears to take issue with the manner in which two prosecutors, Ms. Clemens and Mr. McGinty, handled a criminal matter involving Plaintiff back in 1997. *Id.* at 11, 16-20. In 1997, Plaintiff was indicted in the Circuit Court for the City of Williamsburg and County of James City for engaging in sexual misconduct with “a child less than thirteen (13) years of age.” *Id.*, Ex. 8 at 7. On June 13, 1997, Plaintiff, who was represented by counsel, entered into a plea agreement whereby he agreed to plead guilty to aggravated sexual battery. *Id.*, Ex. 8 at 8-10. Plaintiff received a sentence of five

years of incarceration, with all five years suspended, subject to certain conditions. Mem. In Supp. Of Clemens Mot. To Dismiss, Ex. A, ECF No. 11-1.¹ Here, Plaintiff appears to assert that the Circuit Court for the City of Williamsburg and County of James City lacked jurisdiction to handle Plaintiff's criminal action. Compl. At 3-6, 9-12, 19, ECF No. 1. Plaintiff contends that he is a "Secured Party," who "is not a subject of, or to, the Virginia Commonwealth Constitution or the United States Constitution, its Ordinances, Statutes, Codes, or Regulations." *Id.* at 8. Plaintiff appears to claim that

¹ Plaintiff did not attach a copy of the sentencing order to his Complaint; however, the order is a matter of public record of which this Court may properly take judicial notice. *Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180(4th Cir. 2009).

Ms. Clemens and Mr. McGinty committed a “malfeasance of justice” by allowing the state court criminal case to proceed against him. *Id.* at 19. Plaintiff appears to ask this Court to vacate the decisions of the state court, and to discharge Plaintiff from any obligations owed to the Commonwealth of Virginia as a result of the state court action. *Id.* at 9, 19-20.

II. Motions to Dismiss

A. Standard of Review

Ms. Clemens and Mr. McGinty seek to dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A motion to dismiss under Rule 12(b)(6) should be granted if a complaint fails to “allege facts

to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A Rule 12(b)(6) motion “tests the sufficiency of a complaint and ‘does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.’” *Johnson v. Portfolio Recovery Assocs., LLC*, 682 F. Supp. 2d 560, 567 (E.D. Va. 2009) (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). As such, the Court must accept all factual allegations contained in the Complaint as true and draw all reasonable inferences in favor of Plaintiff. *Johnson*, 682 F. Supp. 2d at 567. In ruling on a 12(b)(6) motion, the Court may

rely upon allegations of the Complaint and documents attached as exhibits or incorporated by reference. *Simons v. Montgomery Cty. Police Officers*, 762 F.2d 30, 31 (4th Cir. 1985). In addition, the Court “may properly take judicial notice of matters of public record.” *Philips v. Pitt Cty, Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

B. Discussion

Ms. Clemens and Mr. McGinty argue, among other things, that (i) “Plaintiff has failed to state a cognizable cause of action” against them; and (ii) they are “entitled to immunity from liability for actions [they] took as a prosecutor during the criminal prosecution of

the Plaintiff.” Mem. In Supp. Of McGinty Mot.
To Dismiss at 3-4, ECF No. 6; Mem. In Supp.
Of Clemens Mot. To Dismiss at 3-4, ECF No.
11. The Court agrees.

Plaintiff’s Complaint is nearly identical
to the Complaint filed by the plaintiff in
Gaskins v. State of South Carolina, No.
2:15cv2589, 2015 U.S. Dis. Lexis 144979
(D.S.C. Sept. 15, 2015), *adopted by* 2015 U.S.
Dist. Lexis 144669 (D.S.C. Oct. 26, 2015). In
Gaskins, the plaintiff filed suit against the
State of South Carolina, “doing business as
Scarlett A. Wilson,” a prosecutor. *Id.* at *1, 11
n.3. The plaintiff claimed that “the state court
‘lacked jurisdiction’ over her and that her

state criminal conviction [was] therefore
'void.'" *Id.* at *8. As in this case, the plaintiff in
Gaskins filed a "nearly impossible to discern"
Complaint that included sections labeled,
"Special Notice to the Court," "International
Commercial Affidavit," "Identification of
Moving Party," "Status of Secured Party,"
"State of Issues," "Notice of Void Judgment,"
"Jurisdiction," "Rescind of Signatures,"
"Appointment of Trustee," "Caveat," "Judicial
Notice," as well as a few others. *Id.* at *3-5. In
Gaskins, the magistrate judge issued a Report
and Recommendation, which was
subsequently adopted by the district judge, in
which she explained:

Plaintiff's complaint is difficult to follow and has many hall-marks of, and appears to be premised on, the "sovereign citizen" theory. *See Parker v. Spencer*, 2015 U.S. Dist. LEXIS 80908, 2015 WL 3870277, *3 (D.S.C.) (quoting *United States v. Ulloa*, 511 F. App'x 105, 106 n.1 (2d Cir. 2013) ("sovereign citizens are a loosely affiliated group who believe that the state and federal governments lack constitutional legitimacy and therefore have no authority to regulate their behavior"); *Presley v. Prodan*, 2013 U.S. Dist. LEXIS 51150, 2013 WL 1342465, *2

(D.S.C.), *adopted by* 2013 U.S. Dist.

LEXIS 47345, 2013 WL 1342539

(D.S.C.) (collecting cases describing the “sovereign citizen” movement and its common features). For example, plaintiff contends that she is a “secured party” and a “flesh and blood” person not subject to the laws and jurisdiction of the United States of South Carolina. She alleges that the state court “lacked jurisdiction” over her and that her state criminal conviction therefore “void.” Courts have repeatedly rejected this baseless “sovereign citizen” theory of jurisdiction. *See United States v.*

Benabe, 654 F.3d 753, 767 (7th Cir. 2011) (“Regardless of an individual’s claimed status...as a “sovereign citizen,” a “secured-party creditor,” or a “flesh-and-blood human being,” that person is not beyond the jurisdiction of the courts. These theories should be rejected summarily, however they are presented.”), *cert. denied*, 132 S. Ct. 1051, 181 L. Ed. 2d 772 (2012); *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990) (describing the “sovereign citizen” theory as having “no conceivable validity in American law”); *United States v. Jagim*, 978 F.2d 1032,

1036 (8th Cir. 1992) (defendant claimed he was “outside” the jurisdiction of the United States; however, the court found this argument to be “completely without merit” and “patently frivolous” and rejected it “without expending any more of this Court’s resources on discussion”).

Id. at *8-9.

Consistent with the findings of the *Gaskins* Court, this Court agrees that Plaintiff’s Complaint fails to state a cognizable claim for relief against Ms. Clemens or Mr. McGinty. Further, as noted above, Plaintiff characterizes his lawsuit as one brought pursuant to 42 U.S.C. § 1983. Compl. At 1,

ECF No. 1. However, “prosecutors engaged solely in a prosecutorial function are covered with absolute immunity” for any § 1983 claims. *Brice v. Jenkins*, 489 F. Supp. 2d 538, 542 (E.D. Va. 2007); see *Imbler v. Pachtman*, 442 U.S. 409, 427 (1976); *Dababnah v. Keller-Burnside*, 208 F.3d 467 (4th Cir. 2000). Here, Plaintiff does not allege that Ms. Clemens and Mr. McGinty acted in any capacity other than that of a prosecutor, and, accordingly, Ms. Clemens and Mr. McGinty are immune from any § 1983 claim. ²

² As noted above, Plaintiff’s Complaint identified the “Commonwealth of Virginia D/B/A: Catheryn K. Clemens Michael L. McGinty” as the named Defendant in this action. Compl., ECF No. 1. The Court notes that, to the extent Plaintiff intended to assert his § 1983 claim against the Commonwealth,

III. Conclusion

For the reasons set forth above, Mr. McGinty's Motion to Dismiss, ECF No. 5, is **GRANTED**, and Ms. Clemens' Motion to Dismiss, ECF No. 10, is **GRANTED**.

Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court,

such claim necessarily fails. "The Eleventh Amendment bars a private individual from suing a state [such as the Commonwealth of Virginia] in federal court," unless "the state consents to be sued in federal court" or "Congress has abrogated the states' Eleventh Amendment immunity." *Madden v. Virginia*, No. 3:11cv241, 2011 U.S. Dist. LEXIS 69452, at *5-6 (E.D. Va. June 27, 2011); *see also* U.S. Const. amend XI; *In re Collins*, 173 F.3d 924, 927 (4th Cir. 1999). The Commonwealth of Virginia has not consented to suits under § 1983, and Congress has not abrogated the Commonwealth of Virginia's Eleventh Amendment immunity for § 1983 cases. *Madden*, 2011 U.S. Dist. LEXIS 69452, at *7. Accordingly, any § 1983 claim against the Commonwealth of Virginia would be barred by the Eleventh Amendment.

Newport News Division, 2400 West Avenue,
Newport News, Virginia 23607. The written
notice must be received by the Clerk within thirty
(30) days from the date of the entry of this
Dismissal Order. If Plaintiff wishes to proceed *in*
forma pauperis on appeal, the application to
proceed *in forma pauperis* is to be submitted to
the Clerk of the United States District Court,
Newport News Division, 2400 West Avenue,
Newport News, Virginia 23607.

The Clerk is **DIRECTED** to send a copy of this
Dismissal Order to Plaintiff and all counsel of
record.

IT IS SO ORDERED.

Norfolk, Virginia

November 27, 2017

/s/Raymond A. Jackson

UNITED STATES

DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Newport News Division

BENJAMIN JACOB STRATTON,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA

D/B/A: Catheryn K. Clemens

Michael L. McGinty,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by the Court. This action came for decision before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Mr.

McGinty's Motion to Dismiss, ECF No. 5, is

GRANTED, and Ms. Clemens' Motion to Dismiss,

ECF No. 10, is GRANTED.

DATED: November 27, 2017

/s/ FERNANDO GALINDO, CLERK

EXHIBIT "B"

RULING FROM APPEAL COURT

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-2446

BENJAMIN JACOB STRATTON,

Plaintiff-Appellant,

v.

COMMONWEALTH OF VIRGINIA, d/b/a Catheryn

K. Clemens, Michael L. McGinty,

Defendant-Appellee.

Appeal from the United States District Court for the

Eastern District of Virginia, at Newport News.

Raymond A. Jackson, District Judge. (4:17-cv-00046-

RAJ-RJK)

Submitted: March 13, 2018 -Decided: March 15, 2018

Before NIEMEYER, KING, and WYNN, Circuit
Judges.

Affirmed by unpublished per curiam opinion.

Benjamin Jacon Stratton, Appellant Pro Se. Sherry
A. Fox, THOMPSON MCMULLAN PC, Richmond,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Benjamin Jacob Stratton appeals the district
court's order denying relief on his 42 U.S.C. § 1983
(2012) complaint. We have reviewed the record and
find no reversible error. Accordingly, we affirm for
the reasons stated by the district court. *Stratton v.*
Commonwealth of Va., No. 4:17-cv-00046-RAJ-RJK

(E.D. Va. Nov. 27, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appeal: 17-2446 Doc: 15-2 Filed: 03/15/2018 Pg: 1of1

FILED: March 15, 2018

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-2446

(4:17-cv-00046-RAJ-RJK)

BENJAMIN JACOB STRATTON

Plaintiff-Appellant

v.

COMMONWEALTH OF VIRGINIA, d/b/a Catheryn

K. Clemens, Michael L. McGinty

Defendant-Appellee

JUDGMENT

In accordance with the decision fo this court,
the judgment of the district court is affirmed.

This judgment shall take effect upon issuance
of this court's mandate in accordance with Fed. R.

App. P. 41. /s/ PATRICIA S. CONNOR, CLERK

Appeal: 17-2446 Doc: 16 Filed: 04/06/2018 Pg: 1 of 1

FILED: April 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2446

(4:17-cv-00046-RAJ-RJK)

BENJAMIN JACOB STRATTON

Plaintiff-Appellant

v.

COMMONWEALTH OF VIRGINIA, d/b/a Catheryn

K. Clemens, Michael L. McGinty

Defendant-Appellee

MANDATE

The judgment of this court, entered March 15,
2018, takes effect today.

This constitutes the formal mandate of this
court issued pursuant to Rule 41(a) of the Federal
Rules of Appellate Procedure.

/s/ PATRICIA S. CONNOR, CLERK