

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5139**September Term, 2017****1:17-cv-00886-UNA****Filed On: November 15, 2017**

Vicente Quiroz,

Appellant

v.

John Thomas Moran, Jr., et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Henderson, Kavanaugh, and Millett, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed May 12, 2017, be affirmed. Appellant does not challenge the dismissal of his claims against appellee Moran on res judicata grounds, and accordingly any such challenge is deemed to have been waived. United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004).

With respect to appellant's claims against the United States and the U.S. Public Defender's Office, his claim under 42 U.S.C. § 1983 fails as a matter of law because he offers no basis to conclude those entities acted under color of state law. See 42 U.S.C. § 1983; Williams v. United States, 396 F.3d 412, 414 (D.C. Cir. 2005). Appellant's claim under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), relies on a theory of respondeat superior based on the assertion that Moran is employed by the U.S. Public Defender's Office. That assertion is factually incorrect because Moran is a private attorney who was appointed to represent appellant in his criminal trial. The claim also fails as a matter of law because "Bivens claims cannot rest merely on respondeat superior." Simpkins v. D.C. Government, 108 F.3d

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366, 369 (D.C. Cir. 1997). Moreover, court-appointed defense attorneys and public defenders do not act under color of state or federal law when acting in their capacity as defense counsel and, therefore, are not subject to claims under either Bivens or § 1983. See Hinton v. Rudasill, 384 Fed. App'x 2, 3 (D.C. Cir. 2010); see also Polk County v. Dodson, 454 U.S. 312, 324 (1981).

To the extent appellant's appellate brief discusses potential claims under the Federal Tort Claims Act, 28 U.S.C. § 2680(k), those claims were not presented to the district court and "cannot be considered for the first time on appeal." United States v. Stover, 329 F.3d 859, 872 (D.C. Cir. 2003).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VICENTE QUIROZ,

Plaintiff,

V.

JOHN THOMAS MORAN, JR., *et al.*,

Defendants.

Case: 1:17-cv-00886
Assigned To : Unassigned
Assign. Date : 5/12/2017
Description: Pro Se Gen. Civil

(F-Deck)

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's application to proceed *in forma pauperis* and his *pro se* complaint. The Court will GRANT the application and DISMISS the complaint.

Defendant John Thomas Moran, Jr. was “hire[d] by the public defenders[’] office [and] assigned by the United States District Court for the Northern District of Illinois” to represent Plaintiff in a criminal matter. Compl. at 1. According to Plaintiff, Defendant committed legal malpractice, *see id.* at 2-3, and thereby violated rights protected under the Fifth and Sixth Amendments to the United States Constitution, *see id.* at 1, and caused Plaintiff to suffer “depression, anxiety, [and] hopelessness,” *id.* at 3. Plaintiff has demanded compensatory and punitive damages. *Id.*

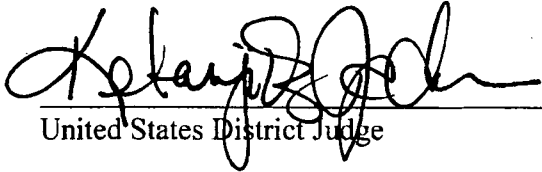
As plaintiff notes, *id.* at 2, he already has brought a civil action against Defendant on claims arising from Defendant's representation of Plaintiff in the same criminal matter. The action was dismissed because the complaint failed to state a claim upon which relief could be granted. See *Quiroz v. Moran*, No. 15 C 8129 (N.D. Ill. Sept. 28, 2015).

Generally, a plaintiff is expected to “present in one suit all the claims for relief that he may have arising out of the same transaction or occurrence.” *U.S. Indus., Inc. v. Blake Constr. Co., Inc.*, 765 F.2d 195, 205 (D.C. Cir. 1985) (citation omitted). The doctrine of res judicata, or claim preclusion, provides “that ‘a judgment on the merits in a prior suit bars a second suit involving the same parties . . . based on the same cause of action.’” *Drake v. FAA*, 291 F.3d 59, 66 (D.C. Cir. 2002) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979)). Here, res judicata bars Plaintiff’s claims because “there has been prior litigation (1) involving the same claims or cause of action, (2) between the same parties or their privies, and (3) there has been a final, valid judgment on the merits, (4) by a court of competent jurisdiction.” *Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006) (citations omitted).

The Court concludes that Plaintiff’s claims are barred under the doctrine of *res judicata*, and, accordingly, the complaint will be dismissed. An Order accompanies this Memorandum Opinion.

DATE:

5/5/17



United States District Judge

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5139

September Term, 2017

1:17-cv-00886-UNA

Filed On: January 23, 2018

Vicente Quiroz,

Appellant

v.

John Thomas Moran, Jr., et al.,

Appellees

BEFORE: Henderson, Kavanaugh, and Millett, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5139

September Term, 2017

1:17-cv-00886-UNA

Filed On: January 23, 2018

Vicente Quiroz,

Appellant

v.

John Thomas Moran, Jr., et al.,

Appellees

BEFORE: Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith,
Kavanaugh, Srinivasan, Millett, Pillard, Wilkins, and Katsas, Circuit
Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/

Ken Meadows

Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5139**September Term, 2017****1:17-cv-00886-UNA****Filed On: April 10, 2018**

Vicente Quiroz,

Appellant

v.

John Thomas Moran, Jr., et al.,

Appellees

BEFORE: Henderson, Kavanaugh, and Millett, Circuit Judges

ORDER

Upon consideration of appellant's motion styled "Request for Judicial Inquiry for Sedition," and the motion for reconsideration of the denial of rehearing, it is

ORDERED that request for judicial inquiry be denied. Appellant has alleged no misconduct on the part of a judge within this court's jurisdiction. It is

FURTHER ORDERED that the motion for reconsideration be denied. Appellant has shown no basis for reconsideration of the denial of rehearing.

The Clerk is directed to accept no further submissions from appellant in this closed case.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk