

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5187

September Term, 2017

1:16-cv-02266-UNA

Filed On: December 15, 2017

Antoine D. Degrate,

Appellant

v.

Scott S. Harris, Clerk, Supreme Court of the
United States, Office of the Clerk,

Appellee

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

BEFORE: Rogers and Srinivasan, Circuit Judges, and Ginsburg, Senior
Circuit Judge

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, which included a motion to appoint counsel, and the appendix. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court order filed July 19, 2017 be affirmed. The district court correctly held that it has no authority to order the Clerk of the Supreme Court to take any action. See In re Marin, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam). Though appellant now claims entitlement to damages, the Clerk enjoys immunity for actions taken as part of the judicial function. See Sindram v. Suda, 986 F.2d 1459, 1460-61 (D.C. Cir. 1993) (per curiam).

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5187

September Term, 2017

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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

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. 17-5187

September Term, 2017

1:16-cv-02266-UNA

Filed On: March 14, 2018

Antoine D. Degrate,

Appellant

v.

Scott S. Harris, Clerk, Supreme Court of the
United States, Office of the Clerk,

Appellee

BEFORE: Rogers and Srinivasan, Circuit Judges, and Ginsburg, Senior
Circuit Judge

ORDER

Upon consideration of the petition for rehearing and the supplement thereto, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

Appendix - 0.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5187

September Term, 2017

1:16-cv-02266-UNA

Filed On: March 14, 2018

Antoine D. Degrate,

Appellant

v.

Scott S. Harris, Clerk, Supreme Court of the
United States, Office of the Clerk,

Appellee

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

ORDER

Upon consideration of the petition for rehearing en banc and the supplement thereto, 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

APPENDIX - E.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUL 19 2017

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Antoine D. DeGrate,

Plaintiff,

v.

Scott Harris,

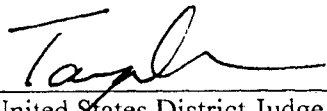
Defendant.

Civil Action No. 16-2266 (UNA)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is
ORDERED that the application to proceed *in forma pauperis* [Dkt. # 2] is GRANTED, and this
case is DISMISSED with prejudice for failure to state a claim.¹

This is a final appealable Order.


United States District Judge

Date: July 19, 2017

¹ Plaintiff is advised that a dismissal for failure to state a claim qualifies as a strike under 28 U.S.C. § 1915(g), which limits a prisoner's ability to proceed *in forma pauperis* in federal court when certain conditions are satisfied.

APPENDIX-B.

FILED

JUL 19 2017

**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Antoine D. DeGrate,

Plaintiff,

v.

Scott Harris,

Defendant.

Civil Action No. 16-2266 (UNA)

MEMORANDUM OPINION

This matter is before the court on its review of plaintiff's *pro se* complaint and application for leave to proceed *in forma pauperis*. For the reasons explained below, the *in forma pauperis* application will be granted and this case will be dismissed pursuant to 28 U.S.C. § 1915A, which requires immediate dismissal of a prisoner's complaint that fails to state a claim upon which relief can be granted.

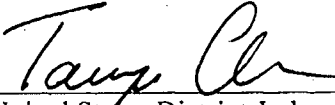
Plaintiff, a Texas state prisoner incarcerated in Beaumont, Texas, has sued the Clerk of the United States Supreme Court for allegedly failing to notify him in a timely manner of the disposition of his petition for a writ of certiorari. Plaintiff seeks injunctive relief.

The Supreme Court “has inherent [and exclusive] supervisory authority over its Clerk.” *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam). Therefore, “a lower court may [not] compel the Clerk of the Supreme Court to take any action.” *Id.*; see *Panko v. Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979), *cert. denied*, 444 U.S. 1081 (1980) (“It seems axiomatic that a

APPENDIX-B:

lower court may not order the judges or officers of a higher court to take an action.”). Hence,
this case will be dismissed. A separate order accompanies this Memorandum Opinion.

Date: July 19, 2017


United States District Judge

APPENDIX-B.

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