

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 22, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

DANNY LYNN DANIELS,

Plaintiff - Appellant,

v.

USAO UT DIST; ANGELA MARIE
REDDISH-DAY; UNITED STATES
PROBATION FOR THE DISTRICT OF
UTAH; MARIA SANCHEZ; UNITED
STATES PROBATION FOR MONTANA;
ASHLEY DICTZ; LAW OFFICE OF
BRYAN JACKSON; UTAH HIGHWAY
PATROL; DURAM JONES AND
PINGAR; SCOTT F. GARRETT,

Defendants - Appellees.

No. 23-4049
(D.C. No. 4:22-CV-00051-DN)
(D. Utah)

ORDER AND JUDGMENT*

Before **EID**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Plaintiff Danny Lynn Daniels, a prisoner appearing pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's order dismissing Daniels's suit.

I. BACKGROUND

A. Factual Background

With almost no factual specificity, Daniels alleges that Defendants, which include various probation officers, law enforcement officers, and his former defense attorney, violated his constitutional rights under the First, Fourth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments. Daniels provides no factual basis for his legal claims. The district court gleaned that Daniels was attempting to allege that law enforcement conducted an illegal search that led to the discovery of the firearms that provided the basis for his charges in the United States District Court for the District of Utah. The district court also adduced an allegation that Daniels received ineffective assistance of counsel by his court-appointed attorney in his underlying criminal case. Finally, the district court determined that Daniels also sought to allege that the prosecutor and the United States Probation Office violated his constitutional rights. Daniels seeks declaratory relief and monetary damages.

B. Procedural History

After Daniels filed his suit, the district court referred the complaint to the magistrate judge for screening under 28 U.S.C. § 1915. In its report and recommendation (the R&R), the magistrate judge recommended that the district court dismiss Daniels's

federal claims with prejudice and decline to extend supplemental jurisdiction over Daniels's state-law claims and to dismiss those claims without prejudice. In the closing paragraph of the R&R, the magistrate judge informed Daniels that he needed to "file any objection to this Report and Recommendation within fourteen (14) days of service" and that "[f]ailure to object may constitute a waiver of objections upon subsequent review." ROA Vol. I at 34.

The district court's docket does not reflect that Daniels filed an objection (although, on appeal, in response to our order to show cause, Daniels argues that he did object to the R&R and that the district court intentionally failed to docket it). The district court entered an order adopting the R&R "in its entirety," *id.* at 42, and, thereafter, entered judgment. Daniels now appeals.

II. STANDARD OF REVIEW

We review *de novo* the district court's dismissal of an action under 28 U.S.C. § 1915(e)(2) for failure to state a claim, applying the same standards we employ to review dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009). "To survive a motion to dismiss, a complaint must 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In conducting our review, we accept all well-pleaded facts as true, view them in the light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor. *Brooks v. Mentor Worldwide LLC*, 985

F.3d 1272, 1281 (10th Cir. 2021). We “can affirm a lower court’s ruling on any grounds adequately supported by the record, even grounds not relied upon by the district court.” *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 879 (10th Cir. 2017) (internal quotation marks and citation omitted). Because Daniels appears pro se, we construe his filings liberally, but we do not serve as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

III. DISCUSSION

Daniels’s complaint is totally devoid of any factual basis for his legal claims. For that reason alone, we may affirm the district court’s dismissal. However, we also affirm the dismissal on the following grounds that the district court discussed:

First, to the extent that Daniels alleges that Defendants violated his constitutional rights in obtaining the evidence used in his underlying criminal proceeding (e.g., by an unlawful search in violation of the Fourth Amendment), these claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) (“[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” (internal citation and footnote omitted)).

Second, any claims that Daniels brings against the prosecutors in his criminal case are barred by prosecutorial immunity. *Chilcoat v. San Juan Cnty.*, 41 F.4th 1196, 1208 (10th Cir. 2022), *cert. denied sub nom. San Juan Cnty., Utah v. Chilcoat*, No. 22-724, 2023 WL 2959387 (U.S. Apr. 17, 2023) (“Absolute immunity was recognized for a prosecutor’s activities that are intimately associated with the judicial phase of the criminal process.” (internal quotation marks and citation omitted)).

Third, Daniels cannot sustain a § 1983 suit against his defense attorney because the attorney was not acting under color of state law. *Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) (noting that public defenders do not act under color of state law for purposes of § 1983 “when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding”).

Fourth, probation officers are protected by absolute immunity if “they are performing a narrowly defined judicial, executive, or legislative function.” *Tripati v. U.S.I.N.S.*, 784 F.2d 345, 347 (10th Cir. 1986) (citation omitted). The district court concluded that Daniels’s allegations “are sparse, but they appear to be related to activities ‘intimately associated with the judicial phase of the criminal process’ and are, therefore, protected by immunity.” ROA Vol. I at 33 (quoting *Tripati*, 784 F.2d at 347). Daniels does not challenge this conclusion.

Fifth, the district court appropriately declined to exercise jurisdiction over Daniels’s state-law claims. 28 U.S.C. § 1367(c)(3) (“The district courts may decline to

exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction.”).

In addition, even if we accept as true that Daniels objected to the R&R, the arguments that he claims he made in his objection do not fully respond to the substance of the R&R. Accordingly, the firm waiver rule applies and bars his appeal. *Johnson v. Reyna*, 57 F.4th 769, 778 (10th Cir. 2023) (“[T]he failure to make timely objection to the magistrate’s findings or recommendations waives appellate review of both factual and legal questions.” (citation omitted; alteration in original)).

Certainly, the doctrines we have applied have their exceptions and nuances, but without more facts or analysis from Daniels, we have no reason to question the magistrate judge’s analysis as set forth in the R&R and as adopted by the district court.

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court’s dismissal of Daniels’s complaint. Finally, we **DENY** Daniels’s motion to appeal *in forma pauperis*.

Entered for the Court

Mary Beck Briscoe
Circuit Judge