

In his pleadings, the Plaintiff alleges that he is a prisoner of the State of South Carolina in the custody of the South Carolina Department of Mental Health. He claims he is confined under an act that is inapplicable to him. He claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims. It is important to note that Mr. Thompson was not the Plaintiff's trial counsel. Further, Mr. Thompson is not a governmental employee. All of the Plaintiff's allegations pertain to alleged pretrial conduct before a substitution of counsel occurred.

In his pleadings, the Plaintiff references what he calls the "dubious holding" of the South Carolina Court of Appeals in the case of Michael Braxton v. South Carolina Dept. of Corr., Case No. 2017-001964. See Braxton v. S.C. Dep't of Corr., 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020). That case pertains to Mr. Braxton's challenge to his sentence calculation with the South Carolina Department of Corrections. The Facts/Procedural History portion of the Court of Appeals' decision states in part:

On November 17, 1983, Braxton was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). Braxton served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, Braxton was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on Braxton. Braxton was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC),¹ and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on Braxton. Braxton completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, Braxton served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, Braxton was incarcerated in Anderson County, South Carolina.² Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, Braxton was transferred back into the custody of SCDC with a release date of June 22, 2022.

Id. at 641–42, 846 S.E.2d at 385.

The Court takes judicial notice of the Plaintiff's prior actions filed in State Courts and Federal Courts. The Plaintiff filed a separate Petition for Writ of Habeas Corpus in the South Carolina Supreme Court seeking release from his civil commitment to the Sexually Violent Predator Treatment Program alleging his incarceration is illegal and unconstitutional, claiming ineffective assistance of counsel by the Defendant and subsequent counsel. See Appellate Case No. 2023-000661. Further, the Plaintiff previously filed a habeas action in Federal Court challenging his civil commitment under the Sexually Violent Predator Act and his detention at the Anderson County Detention Center. That action was recommended for dismissal pursuant to the Younger Abstention Doctrine by the Magistrate, which was adopted by the District Court Judge and the subsequent appeal dismissed by the Federal 4th Circuit Court of Appeals. See Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 822CV02806HMHJDA, 2022 WL 9501277, at *1 (D.S.C. Sept. 9, 2022), report and recommendation adopted, No. CV82202806HMHJDA, 2022 WL 9477346 (D.S.C. Oct. 13, 2022); appeal dismissed by Braxton v. Warden of Anderson Cnty. Det. Ctr., No. 22-7232, 2023 WL 4701007, at *1 (4th Cir. July 24, 2023), cert. denied sub nom. Braxton v. Warden, 144 S. Ct. 1075, 218 L. Ed. 2d 250 (2024).

It should also be noted that the Plaintiff filed a separate civil action pursuant to 42 U.S.C. § 1983, alleging the Defendants in that case violated his constitutional rights. Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *1 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff'd, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023). That case noted that the Plaintiff was incarcerated at the time at the Anderson County Detention Center pursuant to a petition filed under the South Carolina Sexually Violent Predator Act ("SVP") at case number 2020-cp-04-01330 in the

Anderson County Court of Common Pleas. Id. That case set forth Plaintiff's numerous similar and duplicative court filings in detail. Id.

The critical discussion in that case set forth:

This action is subject to dismissal because the parties, the claims, and the operative facts in this action are all duplicative of prior actions filed by Plaintiff in the State court and in this Court. Crowe v. Leeke, 550 F.2d 184, 186 (4th Cir. 1977) ("The principle of res judicata ... is fully applicable in prisoners' civil rights suits brought under [§] 1983."). "Collateral estoppel, or issue preclusion, provides that once a court of competent jurisdiction actually and necessarily determines an issue, that determination remains conclusive in subsequent suits, based on a different cause of action but involving the same parties, or privies, to the previous litigation." Weinberger v. Tucker, 510 F.3d 486, 491 (4th Cir. 2007) (citation omitted).

Plaintiff previously litigated his claims in the state court and in this Court. See Braxton, 846 S.E.2d 383; Braxton II, 2021 WL 252582. Those cases were decided on the merits, and Plaintiff lost. Thus, Plaintiff's claims in this action for damages under § 1983 are barred under res judicata. See Boston v. Stobbe, 586 F. Supp. 2d 574, 580 (D.S.C. 2008) (explaining res judicata precluded an inmate's § 1983 action based on the court's determination of the same issues in a prior habeas action). Accordingly, having previously lost in his cases filed in both the state court and in this Court, Plaintiff is precluded from taking another bite at the apple in this Court. See Wells v. Powers, No. 2:16-cv-1060-TMC-MGB, 2016 WL 6070088, at *4 (D.S.C. Sept. 12, 2016), Report and Recommendation adopted by 2016 WL 6039163 (D.S.C. Oct. 14, 2016).

Braxton v. Scarborough, No. 8:22-CV-1106-HMH-JDA, 2022 WL 1558765, at *5 (D.S.C. Apr. 19, 2022), report and recommendation adopted, No. CV82201106HMHJDA, 2022 WL 1558431 (D.S.C. May 17, 2022), aff'd, No. 22-6638, 2023 WL 2158369 (4th Cir. Feb. 22, 2023).

The Plaintiff makes similar claims in this case that he is being wrongfully detained under the Sexually Violent Predator Act. As set forth above, the Plaintiff claims the Defendant was grossly negligent in his professional capacity. The Plaintiff claims the Defendant failed to provide effective assistance of counsel. He also alleges Constitutional claims.

Discussion

The Defendant is not a governmental employee and is not a state actor for purposes of Plaintiff's attempted federal claims. See Lott v. Sheek, No. 819CV00954DCCJDA, 2019 WL 3308415, at *4 (D.S.C. Apr. 4, 2019), report and recommendation adopted, No. 8:19-CV-00954-DCC, 2019 WL 2511253 (D.S.C. June 18, 2019). The Plaintiff has also failed to allege a cognizable claim for relief for alleged ineffective assistance of counsel. Id. Ineffective assistance of counsel claims are not cognizable as a constitutional tort under Section 1983 where the Plaintiff makes no allegations to plausibly show the Defendant exceeded the traditional functions of counsel. Id.

The Plaintiff's allegations contained in his Complaint and improper attempt at an Amended Complaint do not set forth any allegations of any alleged conduct outside the traditional functions of counsel or outside the parameters of legal representation. Id.; citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981) (explaining ineffective assistance of counsel claims are not cognizable as a constitutional tort under § 1983 where plaintiff makes no allegations to plausibly show an attorney exceeded the "traditional functions as counsel"); Martin v. Burton, No. 0:12-cv-01088-RBH, 2012 WL 2502711, at *2 (D.S.C. June 28, 2012), aff'd, 485 F. App'x 634 (4th Cir. 2012); Trexler v. Giese, No. 3:09-cv-144-CMC-PJG, 2010 WL 104599, at *3 (D.S.C. Jan. 7, 2010) (finding attorney was entitled to summary dismissal in § 1983 action where attorney's representation in the state criminal case fell "squarely within the parameters of his legal representation" although the plaintiff was unhappy with the manner in which the attorney represented her).

Through this lawsuit, the Plaintiff is improperly attempting to relitigate his prior state criminal case. The Plaintiff may not challenge his state conviction in a civil rights action and/or through a purported civil action for damages rather than a Post-Conviction Relief (PCR) action. In Heck v.

Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383, the Supreme Court held that until a plaintiff's sentence and conviction are set aside, any civil rights action based on the conviction, sentence, direct appeal, and related matters will be barred. 512 U.S. at 484; see also Hart v. Ranier, No. CIV.A.8091688RBHBHH, 2010 WL 2228405, at *3 (D.S.C. May 4, 2010), report and recommendation adopted sub nom. Hart v. Rainier, No. 8:09-CV-01688-RBH, 2010 WL 2228413 (D.S.C. June 1, 2010).

To the extent Plaintiff's Complaint and improper attempt at an Amended Complaint can be construed as a legal malpractice claim, the Plaintiff has failed to file a contemporaneous expert affidavit as required by S.C. Code Ann. § 15-36-100. The failure to file an expert affidavit is fatal to the Plaintiff's case.

The Plaintiff has filed his Amended Complaint before receiving a ruling from the Court on his pending Motion to Amend. The Plaintiff has not been granted leave of Court to file the Amended Complaint. As such, his filing is an improper attempt at an Amended Complaint. Regardless, even if the allegations contained in the improper attempt at an Amended Complaint are considered, the Plaintiff has failed to set forth allegations to support a cause of action against the Defendant and the arguments and law set forth above compel dismissal of the Plaintiff's case with prejudice.

In addition, based on the Plaintiff's other cases cited above, the Plaintiff is also improperly attempting to relitigate claims previously made pertaining to his detention under the Sexually Violent Predator Act, albeit against a different Defendant. To the extent the Plaintiff is relitigating claims already raised and ruled upon, those claims are also barred by the doctrine of collateral estoppel. See 2022 WL 1558765, at *5, supra.

Based on the foregoing law which is directly applicable to the Plaintiff's attempted claims and based upon a plain reading of the allegations contained in the Plaintiff's Complaint and improper

attempt at an Amended Complaint, the Plaintiff has failed to state a claim against the Defendant. The Plaintiff cannot set forth a Constitutional Claim. The Plaintiff has failed to provide the required Affidavit to support a legal malpractice claim. In addition, the Complaint, the improper attempt at an Amended Complaint are improper attempts to re-litigate claims previously raised in other Court actions noted above. As a result, this Court finds the above-captioned case should be dismissed with prejudice.

IT IS HEREBY ORDERED that the above-referenced case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED

The Honorable Daniel Coble
Presiding Judge

Date: _____



Richland Common Pleas

Case Caption: Michael Braxton vs Don A Thompson
Case Number: 2024CP4002262
Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774