

SOUTH CAROLINA COURT OF APPEALS

RECEIVED

No: \_\_\_\_\_

MAR 08 2016

Kevin W. McDaniels #14256-471  
Plaintiff.

SC Court of Appeals

-VS-

Nikki Haley, et al.  
Defendants.

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ON APPEAL FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS

Case No: 2014-CP-40-4030

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MOTION FOR EMERGENCY RELEASE BASED UPON INEFFECTIVE ASSISTANCE  
OF COUNSEL/DUE PROCESS VIOLATION/FACTUAL INNOCENT.

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MAY IT PLEASE THIS COURT, Kevin McDaniels moves this Court  
for an ORDER DIRECTING THE STATE OF SOUTH CAROLINA TO IMMEDIATELY  
RELEASE KEVIN MCDANIELS FROM STATE CUSTODY BASED UPON January  
11, 2016 COUNSEL WAS FOUND INEFFECTIVE- THE STATE AND JUDGE DERHAM  
COLE DENIED MCDANIELS ACCESS TO THE COURTS-FACTUALLY INNOCENT.

INEFFECTIVE ASSISTANCE OF COUNSEL

On, January 11, 2016, an Evidentiary Hearing was held in  
spartanburg County, with "Kevin McDaniels" on "TELECONFERENCE"  
in New York, Judge "Ralph Cothran" Presiding" Counsel "Brandt  
Rucker represented Mr. McDaniels and Cross-Examined "Robert  
Hall" who Initially represented Mr. McDaniels in Case No: 2008-  
GS-42-1743,1744,1745,1746, [2 counts of Burglary & 2 counts  
of Grand Larceny], crimes occurring on December 27, 2005 & January  
14, 2006. During the Cross Examination "Robert Hall" was ask  
did Mr. McDaniels ask you for a One Hour Continuance on day  
of Trial while in the Courtroom August 26, 2008 ? So his mother  
could drive to woodruff Ten Minutes away to pick up McDaniels  
stranded Alibi witnesses who drove ten hours from florida to  
testify that McDaniels was in florida.: Robert Hall's response

was=YES McDaniels ask me but I did not Pursue it. Mr. Hall clearly admitted that he was Ineffective during this Evidentiary hearing. Mr. McDaniels was forced to enter an ALFORD PLEA, but for counsels errors McDaniels would not have pleaded but pursued going to trial. See, Hill v. Lockhart, 474 U.S. 52,59(1985). Mr. McDaniels has continuously filed Appeals/2254/Writ of Certiorari arguing Robert Hall abandoned McDaniels day of trial August 26, 2008, while in the courtroom, only to be denied ACCESS TO THE COURTS..

Mr. McDaniels has finally proven that he was denied effective assistance of counsel, and because of this he has been held false Imprisonment. see, Strickland v. Washington, 466 U.S. 668(1984); Porter v. State, 368 S.C. 378,383, 629 S.E. 2d 353,356(2006), Cherry v. State, 300 S.C. 115,117-18,386 S.E. 2d 624,625(1989). Robert Hall stated on December 17, 2013[See Attached], that he knew nothing about alibi witnesses broke down in woodruff, completely lying about this, when on January 11, 2016 he admitted that he was informed- McDaniels has shown Ineffective Assistance of Counsel. He has been Incarcerated since March 11, 2006- Ten(10 Years, Factually Innocent, the Constitutional violation has been proven as of January 11, 2016..

#### DENIED DUE PROCESS RIGHTS/ACCESS TO THE COURTS

Mr. McDaniels directs this Courts to the states return dated September 9, 2014. It clearly stated Mr. McDaniels filed an Initial PCR on June 16, 2009[Case # 2009-CP-42-3350], The respondent filed a MOTION TO DISMISS WITHOUT PREJUDICE ON October 2010. Because McDaniels was housed out of state in a federal facility, the court dismissed the application without prejudice with leave to file when McDaniels returns to state custody on September 11, 2020. The Denial of Access to the Courts was proved on January 11, 2016, when McDaniels was given an Evidentiary hearing by TELECONFERENCE=HERE IN NEW YORK while court was being held in spartanburg, and Robert Hall admitted he was Ineffective another Constitutional Violation=Due Process violation, the State and Judge Derham Cole both denying me ACCESS TO THE COURTS.

Mr. McDaniels argues that the State & Judge Derham Cole shall be held accountable for Maliciously Denying McDaniels access to the Courts. Furthermore, McDaniels has paid thousands of dollars on Filing fees, Postage, Copies, arguing Factual Innocent, only to be denied for failure to exhaust state remedies etc. The State & JUDGE Derham Cole would not allow him to exhaust his state remedies. Finally January 11, 2016 Mr. McDaniels was given a TELECONFERENCE, and Robert Hall did in fact admit he did not pursue a One Hour Continuance and Properly place the state on Notice of Alibi witnesses etc. Mr. McDaniels has been arguing Factual Innocence since day of arrest March 11, 2006, he provided the Courts and Prosecutors office with alibi witness affidavits on April 2006, from several Family witnesses who were with Mr. McDaniels in florida on december 27, 2005 & January 14, 2006, clearly Factually Innocent, then finally January 11, 2016, McDaniels voice is able to be heard and he proved Ineffective assistance of counsel, and Denied his Due Process rights, of access to the courts, If the courts would have entertained McDaniels original PCR in 2009, McDaniels could have produced at least 10 Alibi witnesses to testify on January 11, 2016, but because of the State and Judge Derham Cole denying McDaniels access to the courts, McDaniels was only allowed to have his mother testify, in which she was in court day of trial August 26, 2008, and told "Robert Hall" that Kevin's Alibi Witnesses are broke down in woodruff Ten(10) minutes from the courthouse, she could have drove to get them, but Robert Hall refused to ask for a continuance he admitted this on January 11, 2016, this is preserved on Transcript, while Judge Ralph Cothran Presided during the PCR Evidentiary hearing. Mr. McDaniels has been Mentally & Physically tortured since March 11, 2006, day of arrest.

RELIEF REQUESTED

WHEREFORE, Mr. McDaniels moves this Court to ISSUE AN ORDER FOR THE STATE TO IMMEDIATELY RELEASE KEVIN MCDANIELS FROM STATE CUSTODY BASED UPON THE NEWLY DISCOVERED EVIDENCE-Jan 11, 2016 evidentiary hearing, Ineffective Assistance of counsel, and factually Innocent, most of all the denial of access to the courts.

I declare under penalty of perjury: 3/4/16 2016.

  
Kevin Wayne McDaniels

Kevin W. McDaniels  
Reg# 14256-171  
F.C.I. Otisville  
P.O. Box 1000  
Otisville, N.Y. 10963

RECEIVED  
MAR 08 2016  
SC Court of Appeals

RE: NOTICE OF APPEAL FROM THE COURT OF COMMON PLEAS  
Case No: 2014-CP-40-4030.

TO: SOUTH CAROLINA COURT OF APPEALS  
CLERK OF COURT

P.O. Box 11629  
Columbia S.C. 29211

Dear Clerk:

Please find enclosed a MOTION FOR EMERGENCY RELEASE BASED UPON "INEFFECTIVE ASSISTANCE OF COUNSEL""DUE PROCESS VIOLATION" FACTUAL INNOCENT"

The Attorney for defendants Douglas McKay, P.O. Box 7217, Columbia, S.C. 29201-tel No. (803)-256-4645- Has stated that the South Carolina Court of Appeals has jurisdiction now, since I filed an Appeal in the Lower Courts, in which the Lower Court made a ruling, denying my case, and since then on January 11, 2016 an Evidentiary Hearing was held, and Counsel "Robert Hall" was Ineffective-which has caused Mr. McDaniels to be held "False Imprisonment" since August 26, 2008-day of trial, in which Counsel completely abandoned McDaniels on day of trial. Mr. McDaniels has been physically in custody since March 11, 2006..TEN YEARS...

WHEREFORE, Mr. McDaniels moves this court to excersise jurisdiction over this case AN ISSUE AN ORDER FOR KEVIN WAYNE MCDANIELS TO BE "IMMEDIATELY RELEASED FROM CUSTODY"/

" Please provide me with a Appeal Case number.

Have a blessed day.

Prayed for on this 4th day of Mar 2016.

  
TS/  
Kevin W. McDaniels

Kevin W. McDaniels  
Reg # 14256-171  
F.C.I. Otisville  
P.O. Box 1000  
Otisville, N.Y. 10963

**RECEIVED**  
MAR 08 2016  
SC Court of Appeals

CERTIFICATE OF MAILING


I, Kevin W. McDaniels, certify that I have mailed the enclosed "MOTION FOR EMERGENCY RELEASE BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL/DUE PROCESS VIOLATION/FACTUAL INNOCENT/", mailing such to to the below listed address on this 4<sup>th</sup> day of March 2016.

TO: SOUTH CAROLINA COURT OF APPEALS

CLERK OF COURT

P.O. Box 11629  
Columbia SC 29211

TO: DOUGLAS MCKAY  
ATTYS FOR DEFENDANTS  
1303 Blanding Street  
Columbia, S.C. 29201  
(803)256-4645

  
/s/ Kevin W. McDaniels  
Kevin W. McDaniels  
[Pro-Se]

March 4, 2016

2014-CP-40-4030

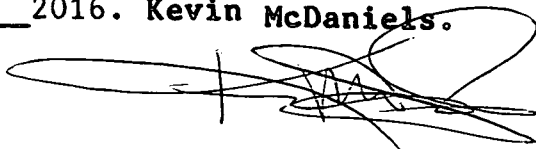
February 29, 2016  
Kevin Wayne McDaniels  
Reg# 14256-171  
F.C.I. Otisville  
P.O. Box 1000  
Otisville, N.Y. 10963

RE: PCR # 2014-CP-42-0506/Case No: 2008-GS-42-1744,1745,1746,1747.  
FACTUAL INNOCENT/MENTAL TORTURE/FALSE IMPRISONMENT..

MAY IT PLEASE ALL JUDGES/PROSECUTORS/CONGRESSMAN/SENATORS,  
I KEVIN WAYNE MCDANIELS AM WRITING THIS IN REGARDS TO BEING MENTALLY  
AND PHYSICAL TORTURED SINCE MARCH 11, 2006-TEN YEARS. ON JANUARY  
11, 2016, JUDGE RALPH COTHRAN CONDUCTED AN EVIDENTIARY HEARING  
IN WHICH I WAS ON TELECONFERENCE HERE IN NEW YORK WHILE COURT  
WAS CONDUCTED IN SPARTANBURG,S.C. PRESENT WAS ATTY "BRANDT RUCKER  
WHO REPRESENTED ME/ROBERT HALL ORIGINAL ATTY WHO ABANDONED ME  
ON DAY OF TRIAL..ON JANUARY 11, 2016 "ROBERT HALL WAS INEFFECTIVE  
WHEN HE ADMITTED HE DID NOT PURSUE A ONE HOUR CONTINUANCE ON  
DAY OF TRIAL AUGUST 26, 2008, WHILE MCDANIELS WAS IN THE COURTRROOM  
AWAITING ALIBI WITNESSES WHO BROKE DOWN IN WOODRUFF AFTER DRIVING  
TEN STRAIGHT HOURS FROM FLORIDA TO TESTIFY THAT MCDANIELS WAS  
IN FLORIDA DECEMBER 27, 2005 & JANUARY 14, 2006, THE SAME DAY  
TWO BURGLARIES OECURED IN SPARTANBURG. JUDGE DERHAM COLE AND THE  
STATE REFUSED MCDANIELS TO FILE A PCR IN 2009-Case # 2009-CP-42-3350,  
because he was in federal custody, telling him he needed to wait  
until September 11, 2020, when he is back in state custody, mcDaniels  
files another PCr and Another and finally on January 11, 2016,  
he is finally able to be heard, and "Robert Hall admitted he  
did not pursue a One Hour Continuance and he did not properly  
file alibi notices etc. Ineffective Clearly. Mr. McDaniels respectfully  
ask all Judge/Propecutors/Congressman/Senators to please act  
in this case. McDaniels has shown Due Diligence since 3/11/2006,  
day of arrest, He stood before the court day of trial 8/26/2008,  
Factually Innocent, awaiting for alibi witnessess to appear.  
Mr. McDaniels ~~Mother~~ received a Phone call downstairs at the courtroom  
from McDaniels alibi witnessess[father & Step Mother],telling  
McDaniels Mother that they are broke down in Woodruff Ten Minutes  
from the Courtroom, McDaniels Mother came upstairs and told Robert  
Hall-and McDaniels ask Robert Hall for a One Hour Continuance  
he did not pursue a One Hour Continuance- Forcing McDaniels to  
plea, then on January 11, 2016-he admitted this, Mr. McDaniels  
has continously filed Litigation begging the Courts to allow  
him to file litigation but because Judge Derham Cole and the  
State refused to allow McDaniels to file litigation,because he  
is in federal custody, he was being held False Imprisonment.This  
is clear,based upon McDaniels finally receiving a TELECONFERENCE  
ON JANUARY 11, 2016, this could have been done in 2009,McDaniels  
and his family has suffered tremendously because of these constitutional  
violations,Ineffective Assistance of Counsel/Denied Access to  
the courts/FactuallyInnocent. Please I am begging you to ORDER  
I BE IMMEDIATELY RELEASED. I SHOULD HAVE BEEN EXONERATED IN 2009.

I declare under perjury:Dated: \_\_\_\_\_ 2016. Kevin McDaniels.

March 4, 2016





Kevin W. McDaniels, #14256-171, Plaintiff, vs. Judge Shiva Hodges, Judge Derham Cole,  
Defendants.  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA  
2015 U.S. Dist. LEXIS 73735  
C/A No. 2:14-4636-TLW-MGB  
April 27, 2015, Decided  
April 27, 2015, Filed

**Editorial Information: Subsequent History**

Adopted by, Objection overruled by, Dismissed without prejudice by, Motion denied by McDaniels v. Hodges, 2015 U.S. Dist. LEXIS 72811 (D.S.C., June 4, 2015)

**Editorial Information: Prior History**

McDaniels v. Richland County Pub. Defenders Office, 2014 U.S. Dist. LEXIS 106379 (D.S.C., July 31, 2014)(McDaniels v. Owen, 2012 U.S. Dist. LEXIS 47405 (D.S.C., Apr. 4, 2012)

Counsel  
Kevin W. McDaniels, Plaintiff, Pro se, Olatheville, NY.  
Judges: MARY GORDON BAKER, UNITED STATES MAGISTRATE JUDGE.

Opinion

Opinion by: MARY GORDON BAKER

Opinion

**REPORT AND RECOMMENDATION**

Kevin W. McDaniels ("Plaintiff"), proceeding pro se, brings this civil action alleging violations of his constitutional rights. Plaintiff is currently incarcerated at the Federal Correctional Institution in Olatheville, New York. He files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

**BACKGROUND**

Plaintiff alleges he was arrested on March 11, 2006, and placed in the wrong custody (the South Carolina Department of Corrections) from January 2007 until September 2009. [Doc. 1 at 1.] Plaintiff alleges he has filed pleadings without success in the state court, the United States District Court, the United States Court of Appeals and the United States Supreme Court because he is "factually innocent of the crime." [Id. at 1-2.] He alleges that Judge Shiva Hodges ("Hodges"), a magistrate judge of the United States District Court, and Judge Durham Cole ("Cole") of the Spartanburg County state court have participated in a civil conspiracy to keep him falsely imprisoned by denying his access to the courts to present his non-frivolous legal claim. [Id.] He seems to allege that Cole has ordered that Plaintiff cannot litigate his claim until he returns to state custody, which will be on September 11, 2020. [Id.; Doc. 14 at 1.] He contends that Hodges and Cole have shown personal bias against Plaintiff and frustrated his attempts to litigate his innocence. [Doc. 1 at 1-2.] He complains of Hodges' actions taken in his lawsuits filed previously in this Court-McDaniels v.

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Richland Cnty. Pub. Defenders Office, C/A No. 1:12-6-TMC:SVH and McDaniels v. South Carolina, C/A No. 1:14-4197-TLW-SVH; [Doc. 8.] Moreover, the complaints that the unfairity has been charged \$350 for filing his action. [Doc. 1 at 1-2.] Plaintiff requests that the Court of Appeals order that both judges be removed from the bench. [Id.] He further requests damages based on the violation of his constitutional rights. [Id.]

**STANDARD OF REVIEW**

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(b)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and "seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff's lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (*pro curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir., 1999), or construct Plaintiff's legal arguments for him. *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir., 1993), or "conjure up questions never squarely presented" to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir., 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dept. of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir., 1990).

**DISCUSSION**

**I. SUMMARY DISMISSAL**

This action should be dismissed based on judicial immunity. It is well settled that judges have absolute immunity from a claim for damages arising out of their judicial actions unless they acted in the complete absence of all jurisdiction. See *Miles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-364, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1977); see also *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir., 1985) (explaining that if a challenged judicial act was unauthorized by law, the judge still has immunity from a suit seeking damages). Whether an act is judicial or nonjudicial relates to the nature of the act, such as whether it is a function normally performed by a judge and whether the parties dealt with the judge in his judicial capacity. *Mifflin*, 502 U.S. at 12. Immunity applies even when the judge's acts were in error, malicious, or in excess of his authority. *Id.* at 12-13. Immunity presents a threshold question. See *Harlow v. Fitzgerald*, 457 U.S. 800, 816, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). Absolute immunity is "an immunity from suit rather than a mere defense to liability." *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). Here, although Plaintiff alleges that Hodges and Cole entered into a civil

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Kevin Wayne McDaniels, Plaintiff, vs. State of South Carolina; Alan Wilson, SC Attorney General; Nikkii Haley, SC Governor; Derham Cole, Chief Judge of Sply. County; Barry Bannette, Chief Prosecutor of Spartanburg Co.; Chuck Wright, Spartanburg Co. Sheriff; Tim Tucker, Spartanburg Co. Police Officer; Phil Easter, Spartanburg Co. Police Officer; Robert Hall, Spartanburg Co. Public Defender; sued in their individual and official capacity, Defendants.  
 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA  
 2014 U.S. Dist. LEXIS 180277  
 C/A No.: 1:14-4197-TLW-SVM  
 November 20, 2014, Decided  
 November 20, 2014, Filed

Editorial Information: Subsequent History

Adopted by, Objection overruled by, Dismissed without prejudice by, Motion denied by McDaniels v. South Carolina, 2015 U.S. Dist. LEXIS 3460 (D.S.C., Jan. 12, 2015)  
 Editorial Information: Prior History

McDaniels v. Owen, 2012 U.S. Dist. LEXIS 47405 (D.S.C., Apr. 4, 2012)

Counsel: Kevin Wayne McDaniels, Plaintiff, Pro se, Ollisville, NY.  
 Judges: Shiva V. Hodges, United States Magistrate Judge.

Opinion

Opinion by: Shiva V. Hodges

Opinion

REPORT AND RECOMMENDATION

Plaintiff Kevin Wayne McDaniels, proceeding pro se and in forma pauperis, is a federal prisoner incarcerated in Federal Correctional Institution ("FCI") in Ollisville, New York, a facility of the Bureau of Prisons ("BOP"). Plaintiff is serving concurrent federal and state sentences. He brings this civil action asserting federal and state law claims against the following defendants: State of South Carolina, South Carolina Attorney General Alan Wilson, South Carolina Governor Nikkii Haley, Chief Judge of Spartanburg County Derham Cole, Chief Prosecutor of Spartanburg County Barry Bannette, Spartanburg County Sheriff Chuck Wright, Spartanburg County police officers Tim Tucker and Phil Easter, and Spartanburg County Public Defender Robert Hall. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Local Civ. Rule 73.02(B)(2)(f) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that the district judge dismiss the amended complaint in this case without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff's amended complaint seeks damages under 42 U.S.C. § 1983 and the South Carolina Tort Claims Act and asserts claims for denial of access to courts, false imprisonment, and civil



conspiracy. ECF No. 8 at 11. Plaintiff alleges that he was coerced into confessing to two South Carolina burglaries that he did not commit. *Id.* at 2-3. Plaintiff states that he has proof that he was in Florida when the crimes were committed, but his claims of innocence have been ignored. *Id.* at 3, 5-7. Plaintiff contends that he entered an involuntary *Alford* plea in South Carolina state court to the burglary charges and received two 15-year sentences. *Id.* at 3. Plaintiff alleges that he has filed several unsuccessful state and federal actions challenging his state convictions, and claims he currently has a pending post-conviction relief action challenging his state burglary convictions and sentences. *Id.* at 4, 6, 8. Plaintiff argues that he is being denied access to the courts because the State of South Carolina refuses to allow him to exhaust his state remedies until he is placed in state custody on September 11, 2020. *Id.* at 4, 6, 11. Plaintiff seeks monetary damages. *Id.* at 12.

II. Discussion

A. Standard of Review

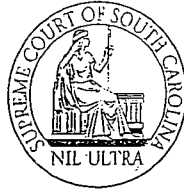
Plaintiff filed his amended complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992). A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Loebke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Engelson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weiler v. Dep't of Soc. Servs.*, 901 F.2d 587, 380-91 (4th Cir. 1990).

B. Analysis

Plaintiff has another case pending before this court that also asserts claims of false imprisonment and a denial of access to courts. *See McDaniels v. Wright*, C/A No. 1:14-3728-TLW (D.S.C. Sept. 23, 2014). As in the instant pleading, Plaintiff's pending case alleges that he was coerced into entering an *Alford* plea to two South Carolina burglary charges, but states that he has proof that he was in Florida when the crimes were committed. *Id.* at ECF No. 1. Plaintiff states that the filed several unsuccessful state and federal actions challenging his state convictions and argues that his claims of factual innocence have been ignored. *Id.* Because the issues involved in the complaint *sub judice* are currently before the court in Plaintiff's pending case, this duplicate § 1983 complaint is frivolous and subject to dismissal. *See Cottle v. Beil*, No. 00-8307, 2000 U.S. App. LEXIS 18956, 2000 WL 1144623, at \*1 (4th Cir. Aug. 14, 2000) ("Because district courts are not required to entertain duplicative lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e)"). Therefore, in the interests of judicial economy and efficiency, the instant complaint should be summarily dismissed. *See Aloe Creme Labs, Inc. v. Franchise Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970) ("The District Court clearly had the right to take notice of its own files and records and it had no duty to





# The Supreme Court of South Carolina

## OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola  
Disciplinary Counsel

Joseph P. Turner Jr.  
Assistant Disciplinary Counsel

Post Office Box 12159  
Columbia, South Carolina 29211

Telephone: (803) 734-2038  
Fax: (803) 734-1964

January 4, 2016

### PERSONAL AND CONFIDENTIAL

Kevin Wayne McDaniels #14256-171  
Federal Correctional Institution  
Post Office Box 1000  
Otisville, NY 10963

Re: Judge: Circuit Court Judge J. Derham Cole  
South Carolina Circuit Court, Seventh Circuit  
Matter Number: 15-DE-J-0284

Dear Mr. McDaniels:

We have received and reviewed your complaint about Circuit Court Judge J. Derham Cole. The authority of this office and the jurisdiction of the Commission on Judicial Conduct concerning complaints against judges are limited to issues of whether a judge has committed misconduct or is incapacitated within the guidelines of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, adopted by the Supreme Court of South Carolina.

These rules do not apply to questions about whether or not the outcome of a case handled by a judge was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters which must be addressed by you to the court or raised by you on appeal using the appropriate appellate procedures.

In addition, we do not seek to get a judge to do something a person wants done. We cannot give advice about your case or the legal system in general. This is not a place for an individual to seek relief, but a place where institutional values are promoted for the good of everyone who has dealings with our legal system.

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN  
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET  
SUITE 3000  
SPARTANBURG SC 29303



TELEPHONE (864) 596-2561

FAX (864) 596-2284

December 17, 2013

Mr. Kevin W. McDaniels  
Reg. # 14256-171  
F.C.I. Otisville  
P.O. Box 1000  
Otisville, NY 10963

Re: Your letter dated December 9, 2013

Dear Mr. McDaniels:

In response to your letter to me of December 9, 2013, please be advised that Robert Hall is an attorney in my office. Although you, apparently, were trying to send the letter to the Federal Public Defender, you actually addressed your letter to my office.

I have also spoken with Mr. Hall about some of the allegations contained in your letter. Mr. Hall advises me that he was never told that your alibi witnesses were twenty minutes away from court or that they were in Woodruff at the time the judge wanted to select your jury. Had he been told that they were in Woodruff, Mr. Hall would have gone forward with the trial, had you wanted to do so, because there was more than enough time for them to get to court before Mr. Hall would have presented their testimony. Mr. Hall has assured me that you freely decided to plead guilty, and he worked diligently to get the Solicitor to lift the "life without parole" notice so that you could receive the concurrent time that you received.

Because of the above, please be advised that this office and I will take no further action on your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay T. Allen".

Clay T. Allen  
Circuit Public Defender

CTA:

FILED  
CLERK OF COURT  
2014 JAN -3 PM 4:12  
M. HOPE BLACKLEY

Dated: ~~Feb 11~~ 3, 2016

Kevin Wayne McDaniels  
Reg# 14256-171  
F.C.I. Otisville  
P.O. Box 1000  
Otisville, N.Y. 10963

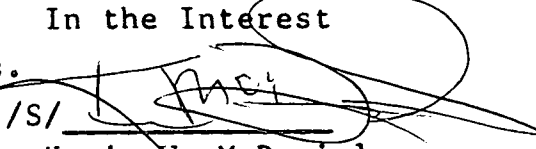
RE: EMERGENCY RELEASE.  
TO: South Carolina Court of Appeals  
Clerk of Court

~~PO BOX 11629~~  
~~COLUMBIA S.C. 29211~~

MAY IT PLEASE THIS COURT, I, Kevin W. McDaniels, move this court to GRANT THE ATTACHED MOTIONS, BASED UPON "NEWLY DISCOVERED EVIDENCE" that was discovered January 11, 2016, at the PCR Evidentiary hearing in Spartanburg South Carolina, in which Counsel "Robert Hall" was found to be Ineffective" which has caused Mr. McDaniels to be held "False Imprisoned" since August 26, 2008, day of trial but Mr. McDaniels has been Falsely Imprisoned since day of arrest March 11, 2006-TEN YEARS.

Mr. McDaniels has attached an Exhibit THE STATES September 9, 2014 RETURN where the State along with Circuit Judge Derham Cole both conspired to deny me access to the courts because of me being in federal custody, the denial of access to the courts was proven when McDaniels finally received an Evidentiary hearing BY TELECONFERENCE ON January 11, 2016, McDaniels being in NEW YORK, while court held in Spartanburg South Carolina. This Court shall GRANT the attached Motions based upon McDaniels has proven that Counsel Robert Hall was Ineffective on day of trial August 26, 2008, based upon the Ineffectiveness Mr. McDaniels was forced to enter an ALFORD plea, then he filed numerous Lawsuits Arguing Derham Cole and the State refuses to allow me in court because I am in federal custody, they refused to entertain my pleading telling me to Exhaust state remedies etc. Finally on January 11, 2016 McDaniels was given an Evidentiary hearing and Counsel was Ineffective. McDaniels has suffered Mentally and Physically because of these constitutional violations. In the Interest of Justice Please Grant the attached Motions.

Prayed for on this \_\_\_ day of \_\_\_ 2016.

/s/   
Kevin W. McDaniels

2  
MARCH 3, 2016

Julius W. McKay, II  
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Daniel R. Settana, Jr.  
M. Stephen Stubley  
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February 3, 2016

Of Counsel:  
C. E. Hardin, Jr.

Via Email Only: [cmanninglc@sccourts.org](mailto:cmanninglc@sccourts.org)

The Honorable L. Casey Manning  
Post Office Box 192  
1701 Main Street  
Columbia, SC 29202

Re: Kevin W. McDaniels, #14256-171 v. Haley, et al.  
Case No: 2014-CP-40-4030  
Our File No: 9-436

Dear Judge Manning:

I want to bring to your attention that Judge Gee granted our Motion to Dismiss this suit in October 2015. Plaintiff filed a Notice of Appeal in November 2015, which I have also moved to dismiss. As such, I believe Plaintiff's Motion is improper as the Court of Appeals now has jurisdiction over this matter.

I also believe it is improper as Plaintiff's motion involves a South Carolina Department of Corrections E.H. Cooper account, but the SCDC is not a party to this matter, and no one from SCDC is named either.

If you Honor still wishes to hear this matter, then a teleconference is required as Plaintiff is incarcerated with Federal Corrections Institution – Otisville. Plaintiff filed a motion requesting a teleconference recently because of this motion be noticed for hearing.

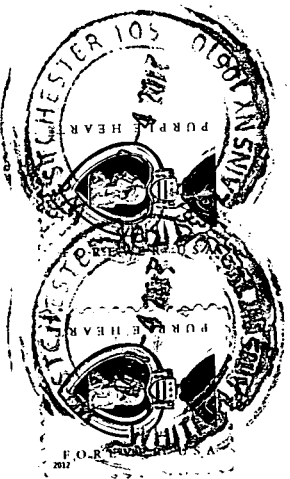
Plaintiff also sent a letter and "Notice of supporting facts and exhibits" for your review, which I received a copy of yesterday.

I believe the currently scheduled hearing would be of no use as Plaintiff cannot attend. I am happy to contact FCI-Otisville and set up the teleconference, or your honor may rule on the matter through the written submissions as Judge Gee did for the motion to dismiss.

I will be filing a response to your clerk by the end of the day with Defendants' position. I will await instruction from your Honor or his law clerk regarding the hearing.

NAME Kelvin McDaniel  
REGISTER NUMBER 1285617  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 1000  
OTISVILLE, NY 10963

LEGAL MAIL



⇔ 14256-171 ⇔

Sc Court-- Of Appeals  
Judge JOHN FEW  
PO BOX 11629  
Columbia, SC 29211  
United States

**RECEIVED**

MAR 18 1970

SC Court of Appeals

**FEDERAL CORRECTIONAL INSTITUTION**

**OTISVILLE, NY 10963**

**DATE:** 3/4/16

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question of problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer enclosed correspondence for forwarding to another addressee, please return the enclosure to the address above.