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STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
DOCKET NO. 2016-CP-460524

60 Court of Appeals

Steven Louis Barnes, SK# 5290, )  
 )  
Plaintiff, )

-vs-

Hugh Ryan, General Counsel; South Carolina )  
Office of Indigent Defense, )  
 )  
Defendant. )

ORDER DISMISSING PLAINTIFF'S  
COMPLAINT PURSUANT TO  
RULE 12(B)(6) OF THE  
SOUTH CAROLINA RULES OF  
CIVIL PROCEDURE

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JAMES H. W. MCBRIDE  
CLERK OF COURT  
& G.S.

RICHLAND COUNTY  
FILED

This matter is before the Court pursuant to a Notice of Motion and Motion to Dismiss filed on November 29, 2016. Present and appearing was the Pro Se Plaintiff. The Defendants were present, along with their attorney.

FACTS

The Plaintiff was convicted of Capital Murder and was sentenced to death. That conviction was overturned by Order of the South Carolina Supreme Court on January 14, 2014. The Plaintiff requested two attorneys to represent him in this matter, Bill McGuire of the Capital Trial Division and Elizabeth Franklin Best (a private attorney).

On April 23, 2014, a Hearing was conducted by the Honorable William P. Keesley for the Plaintiff to be appointed a counsel in this matter. At that Hearing, the then Deputy Director and General Counsel of the Commission of Indigent Defense, Hugh Ryan, appeared. Mr. Ryan objected to the appointment of private counsel and requested that the Court appoint two attorneys from the Capital Trial Division.

The Plaintiff then objected to both counsel being appointed from the Capital Trial Division of the Commission of Indigent Defense. Judge Keesley Ordered the parties to file a

brief regarding appointment of counsel in which a Hearing was conducted on September 11, 2014. That Hearing was before the Honorable Diane S. Goodstein in which she appointed Bill McGuire and Jeffrey P. Bloom (private counsel) by Order dated September 28, 2014.

The Plaintiff has filed this action loosely alleging gross negligence and violation of his Sixth and Fourteenth Amendment Rights pursuant to 42 U.S.C. 1983.

**PLAINTIFF'S DUE PROCESS AND GUARDIAN AD LITEM ARGUMENTS**

The Pro Se Plaintiff argued that he had requested the appointment of a Guardian ad Litem which had not been acted upon as to date. He also advised that he was just served with the Memorandum in Support of Defendants' Motion to Dismiss at the Hearing. He stated that he needed time to review and respond in order to comply with his due process rights. He argued that he was entitled to an opportunity to respond to the Memorandum of the Defendant. Rule 17(D) of the South Carolina Rules of Civil Procedure specifically retained the provisions of S.C. Code Ann. §15-5-320 (repealed by Act 100, July 1985), which required the appointment of a Guardian ad Litem for imprisoned persons. The reporter's note further stated that the Rule "narrows existing practice by providing for a Guardian ad Litem only when the person is imprisoned outside the State, and that in most civil cases, including prisoners, post-conviction relief proceedings, a Guardian ad Litem would not be required for an in-state prisoner who is normally represented by appointed or retained counsel. The case of Gossett v. Gillan provides that the appointment of a Guardian ad Litem is discretionary if the trial court determines the alternative procedure of bringing the prisoner to trial is more feasible and adequately protects his rights. A Guardian ad Litem is not necessary for the appointment in which the prisoner initiated his own lawsuit and the Defendant moves to dismiss. The Plaintiff is perfectly capable of representing himself and a Guardian would most likely not be an attorney who could argue the

merits of his Complaint. There is not a Constitutional Right to an attorney when a prisoner files a lawsuit.

With all this being considered, the Court hereby denies his request for the appointment of a Guardian ad Litem.

The Court also finds that the Pro Se Plaintiff is held to the same standards as attorneys and should abide by the South Carolina Rules of Civil Procedure. A Memorandum in Support of a Motion for Summary Judgment is not required to be filed prior to the Hearing per the South Carolina Rules of Civil Procedure. These memorandums are just summarized arguments that are made by attorneys. Therefore, the Court does not find any due process violation by not continuing the Hearing to give the Plaintiff an opportunity to review and respond.

#### **PLAINTIFF'S NEGLIGENCE ACTION**

A. The Plaintiff initiated this action alleging that the Defendants interfered with his "statutory right to counsel" in violation of S.C. Code Ann. §16-3-26.

S.C. Code Ann. §16-3-26 is the Statute for the appointment of attorneys. This Statute provides the procedural mechanism to which an indigent individual is to be appointed a Public Defender. This does not create any statutory duty or right to either party.

The Defendant argued, as it related to the gross negligence claim of the Plaintiff, that §16-3-26 did not create any duty specifically to individuals or the Plaintiff, but rather to the public at large. Thus, the Public Duty Rule would bar any relief sought by the Plaintiff or that cause of action.

In reviewing this matter, the Court does determine that the Public Duty Rule acts as a bar to the Plaintiff's negligence cause of action for violation of S.C. Code Ann. §16-3-26. See

Jensen v. Anderson County Department of Social Services, 304 S.C. at 201, 403, S.E. 2d 617 (1991).

B. S.C. Code Ann. §17-3-350 provides immunity from civil lawsuits to the Defendants. This Statute specifically states, “the members of the commission and the Circuit Public Defender Selection Panel and other policy making or administrative personnel, acting in a policy making or administrative capacity in connection with the Commission or the Panel, are not subject to civil liability resulting from an act or failure to act in the implementation and carrying out of the purposes of this Chapter”. The Plaintiff’s allegations that Mr. Ryan opposed his request of an appointment of private counsel by requesting the Court to appoint two members of the Death Penalty Trial Division, was in furtherance of his administrative duties and responsibilities pursuant to Defense of Indigents Act contained in Title 17, Chapter 3 of the South Carolina Code.

This Court finds that the Defendants have immunity from any liability pursuant to S.C. Code Ann. §17-3-350.

C. Lastly, in regards to the Plaintiff’s gross negligence cause of action against the Defendants, the Plaintiff cannot possibly establish any damages. The Court inquired as to what damages the Plaintiff sustained as a result of Mr. Ryan’s request that he be appointed two attorneys from the Capital Trial Division. The Plaintiff could not articulate any damages that he sustained. This is due to the fact that Judge Goodstein denied Mr. Ryan’s request for the appointment of two Capital Trial Attorneys from the Commission of Indigent Defense and appointed a private attorney to represent the Plaintiff in his death penalty trial.

The Plaintiff received the relief he sought from the Court with the appointment of a private attorney. The alleged interference by the Defendant did not result in any damage

whatsoever to the Plaintiff. Thus, the Plaintiff cannot maintain a negligence action against the Defendants.

In order to establish liability in a negligence action, the Plaintiff must show: (1) a duty of care owed by the Defendant to the Plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E. 2d 153 (1999).

The Plaintiff failed to establish any evidence of damages as a result of his alleged negligent acts against the Plaintiff. Therefore, the Plaintiff's cause of action for gross negligence fails as a matter of law.

#### **PLAINTIFF'S 42 U.S.C. §1983 CLAIMS**

The Plaintiff also alleges that the Defendants violated his civil rights as provided by 42 U.S.C. §1983. This Court also finds that there is no cognizable claim contained in the allegations of the Plaintiff's Complaint.

A. There is well settled law there that there is no Respondeat Superior liability in §1983 actions. See, Monell v. Department of Social Services, 436 U.S. 658, 694 (1978). Therefore, a Defendant can only be held responsible if, and only if, a Plaintiff can show that some policy promulgated by the Defense caused his or her constitutional right deprivation. See, Fisher v. Washington Metro Area Transit Authority, 690 F. 2d 1133 (1982).

There are no allegations in the Plaintiff's Complaint as to any policies promulgated that caused a constitutional deprivation. Furthermore, as the Court references hereinafter, there is not a constitutional deprivation. Therefore, the Plaintiff's Complaint for violation of 42 U.S.C. §1983 against the Defendant South Carolina Commission of Indigent Defense, fails as a matter of law.

B. The Plaintiff lastly claims that the Defendant Ryan violated his constitutional rights pursuant to 42 U.S.C. 1983. The Plaintiff must show, (1) that the state officials deprived him of an actual constitutional right, and (2) that the action was clearly established at the time of the alleged violation. Wilson v. Layne, 526 U.S. 603, 609, 119 S. Ct. 1692, 143 L.E. 2d 818 (1999). Only if both prongs are satisfied can the Plaintiff overcome the Defendant's assertion of immunity.

This Court finds that the Plaintiff does not have a Constitutional Right to an attorney of his choosing. The Plaintiff does have a Sixth Amendment Right to have an attorney represent him in this matter. However, the right of an accused to effective assistance of a counsel does not extend to the appointment of counsel of choice. State v. Boylan, 324 S.C. 552 (1996).

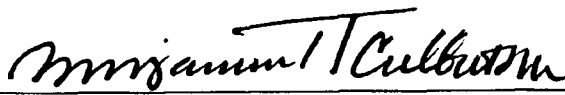
Since there is no deprivation of an actual Constitutional Right alleged in the Plaintiff's Complaint, his Complaint also fails as it relates to his cause of action for violation of his civil rights against Defendant Ryan.

**NOW, THEREFORE**, based upon the foregoing, it is hereby,

**ORDERED** that the Plaintiff's Complaint is hereby dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure due to the fact that the allegations of the Complaint do not contain a cognizable legal theory and/or there are insufficient facts under a cognizable theory to which relief could be granted.

**AND IT IS SO ORDERED.**

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September 8, 2018.

  
Benjamin H. Culbertson  
Presiding Judge of the Court of  
Common Pleas for the Fifth Judicial Circuit