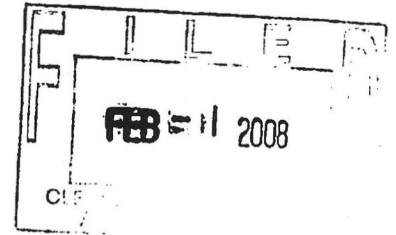


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



WESLEY C. SMITH,
Plaintiff,
v.
GAYLORD L. FINCH, JR., et al.,
Defendants.

Civil Action No. 07-1002

ORDER

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's Complaint. Plaintiff's Complaint asserts five counts based on allegations that Defendants violated his constitutional rights.

Defendant Gaylord Finch is a judge in the Circuit Court of Fairfax County, Virginia. Plaintiff's Complaint asserts that Judge Finch violated his constitutional rights during a court proceeding before Judge Finch in which Plaintiff was tried for misdemeanor trespassing. Judges enjoy absolute immunity for actions made in their official judicial capacities. Dennis v. Sparks, 449 U.S. 24, 27 (1980). The doctrine grants judges immunity from suit and allegations of bad faith or malice are insufficient to defeat its protections. See Mireless v. Waco, 502 U.S. 9, 11 (1991). Plaintiff has not alleged any acts that deprive Judge Finch of his judicial immunity from suit.

Plaintiff also sues the Office of the Public Defender and Dawn Butorac for alleged constitutional violations committed during their representation of Plaintiff prior to his trial before Judge Finch. State officials acting under color of state law are afforded qualified immunity from civil liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Even if Defendants Butorac and the Office of the Public Defender were acting under color of state law, Plaintiff's complaint does not allege sufficient facts that either violated a clearly established statutory or constitutional right.

For the foregoing reasons, all three Defendants have immunity from Plaintiff's Complaint, and it is hereby

ORDERED that Defendants' Motion to Dismiss the Complaint is GRANTED and Plaintiff's Complaint is DISMISSED.

/s/
Claude M. Hilton
United States District Judge

Alexandria, Virginia
February , 2008

MIME-Version:1.0 From:cmecf@vaed.uscourts.gov To:cmecf@vaedlei.vaed.circ4.dcn Bcc:
Message-Id:<1190324@vaed.uscourts.gov>Subject:Activity in Case 1:07-cv-01002-CMH-BRP Smith v.
Finch et al Order on Motion to Dismiss/Lack of Jurisdiction Content-Type: text/html

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without
charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of Virginia

Notice of Electronic Filing

The following transaction was entered on 2/4/2008 at 3:13 PM EST and filed on 2/1/2008

Case Name: Smith v. Finch et al

Case Number: 1:07-cv-1002

Filer:

WARNING: CASE CLOSED on 02/01/2008

Document Number: 8

Docket Text:

ORDER granting [2]Motion to Dismiss for Lack of Jurisdiction and Plaintiff's Complaint is DISMISSED.
(See Order For Details). Signed by Judge Claude M. Hilton on 2/1/08. (nhall)

1:07-cv-1002 Notice has been electronically mailed to:

James V. Ingold JIngold@oag.state.va.us

1:07-cv-1002 Notice has been delivered by other means to:

Wesley C. Smith

5347 Landrum Road, Apt.#1

Dublin, VA 24084-5063

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091796605 [Date=2/4/2008] [FileNumber=1190322-0]

[93d0760791b93064e8c52f4a47eb02a907ae631d41ac19bbaa7853556ff49e74b856

fee0ca21c8c8a5b020fcfe11ff74ead48255ccaddcbe4e518e82d772d59f]]