

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13693
Non-Argument Calendar

DERREL LEONARD THOMAS,

Plaintiff-Appellant,

versus

JUDGE KURT HITZEMANN,
STATE ATTORNEY JOSHUA HEALION,
KYLE DOTY,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:25-cv-01616-MSS-LSG

Before ROSENBAUM, GRANT, and KIDD, Circuit Judges.

PER CURIAM:

Derrel Leonard Thomas, proceeding pro se, sued Florida state court judge Kurt Hitzemann and state prosecutors Joshua Healion and Kyle Doty for allegedly violating his Fourteenth Amendment rights during a state prosecution against him for driving under the influence. The district judge denied Thomas's motion seeking her disqualification and dismissed Thomas's complaint. After careful review, we affirm in part and vacate in part.

I. BACKGROUND

On November 15, 2024, a police officer observed Thomas driving a vehicle resembling a golf cart in the center of the road. After a search of the vehicle's vanity plate revealed that it was not registered, the officer stopped Thomas and called for backup. During the stop, the officers observed several open containers inside the vehicle and Thomas exhibited signs of intoxication. Thomas was ultimately arrested and charged with driving under the influence and failure to register a motor vehicle, among other things, which he proceeded to litigate pro se.

Healion and Doty prosecuted Thomas's state criminal case before Judge Hitzemann in Hernando County, Florida. Early on in the state prosecution, Thomas filed a motion to dismiss and a motion to suppress evidence. Judge Hitzemann denied both motions.

Following the denial of his motions, Thomas filed a pro se complaint against Judge Hitzemann and Healion in federal district court. He later amended his complaint to add Doty as a defendant, though he never completed service on Doty. At all times relevant to this appeal, the state criminal prosecution was ongoing.

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Thomas's amended complaint alleged that Judge Hitzemann, Healion, and Doty conspired to obstruct justice by amending a sworn probable cause affidavit (the arrest report) to say that Thomas was driving a low-speed vehicle rather than a golf cart. Thomas contended that this amendment resulted in Healion and Doty "pursu[ing] charges without probable cause" and Judge Hitzemann denying his motion to dismiss. Thomas also asserted a claim under 42 U.S.C. § 1983 and alleged that Judge Hitzemann, Healion, and Doty racially discriminated against him in violation of his Fourteenth Amendment rights. He requested that the district court transfer the state prosecution to a different court and award him punitive and compensatory damages.

Soon after initiating his federal lawsuit, Thomas filed a motion to disqualify the district judge presiding over it. He argued that the district judge should voluntarily recuse herself because she "has a[] pending appeal" regarding a case where she dismissed Thomas's complaint and "never ruled on a Motion for Change of Venue" that Thomas had filed. Thomas also generally asserted that the district judge had defied Florida law by conflating misdemeanor and felony battery. The district court denied Thomas's motion to disqualify because Thomas failed to identify any extra-judicial conduct that would require recusal, and he did not provide an affidavit in support of his motion.

Then, Judge Hitzemann and Healion moved to dismiss Thomas's complaint. The district court granted those motions and dismissed Thomas's complaint with prejudice. The district court

held that Thomas failed to state a claim for monetary relief because judicial and prosecutorial immunity barred his claims against Judge Hitzemann, Healion, and Doty. The district court also held that, pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), it lacked subject matter jurisdiction to consider Thomas’s request to transfer the venue of his state prosecution. Thomas timely appealed.

II. STANDARD OF REVIEW

Two standards of review guide this appeal. We review a district judge’s recusal decision for abuse of discretion. *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1319–20 (11th Cir. 2002). We review a district court’s *Younger* abstention decision under the same standard. *Leonard v. Ala. State Bd. of Pharm.*, 61 F.4th 902, 907 (11th Cir. 2023).

We review de novo the grant of a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Caterpillar Fin. Servs. Corp. v. Venequip Mach. Sales Corp.*, 147 F.4th 1341, 1346 (11th Cir. 2025). The standard for reviewing a district court’s sua sponte dismissal under Rule 12(b)(6) “is less clear,” but we have previously reviewed for an abuse of discretion sua sponte dismissals where the plaintiff had not completed service and the defendant made no filings. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007); *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1336 (11th Cir. 2011).

Although a pro se litigant’s pleadings must be construed more liberally than those drafted by attorneys, “this leniency does not give a court license to serve as *de facto* counsel for a party, or to

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rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quoting *GJR Invs., Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998)). We may also affirm on any ground supported by the record. *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1210 (11th Cir. 2020).

III. DISCUSSION

A. *The District Court Properly Denied Thomas’s Disqualification Motion.*

We first address whether the district court abused its discretion when it denied Thomas’s motion to disqualify. It did not.

Disqualification of federal district judges is governed by two federal statutes, 28 U.S.C. §§ 144 and 455. Under § 144, recusal is required when a party “makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party[.]” 28 U.S.C. § 144. “To warrant recusal under § 144, the moving party must allege facts that would convince a reasonable person that bias actually exists.” *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000).

Under § 455, a federal judge “shall disqualify h[er]self in any proceeding in which h[er] impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). A judge’s impartiality might be questioned if she has “personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” *Id.* § 455(b)(1). Disqualification is warranted only if an

“objective, disinterested, lay observer fully informed of the facts . . . would entertain a significant doubt about the judge’s impartiality.” *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990)).

The party seeking disqualification must allege that the bias is “personal as distinguished from judicial in nature.” *Id.* (quoting *United States v. Phillips*, 664 F.2d 971, 1002 (5th Cir. Unit B 1981)). As such, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion” under § 455. *Liteky v. United States*, 510 U.S. 540, 555 (1994). And “except where pervasive bias is shown, a judge’s rulings in the same or a related case are not a sufficient basis for recusal.” *Bolin*, 225 F.3d at 1239.

The district judge did not abuse her discretion by denying Thomas’s disqualification motion. Thomas did not provide an affidavit in support of his motion, as required by § 144. Nor did he offer factual evidence of personal bias that would sustain a doubt about the district judge’s impartiality and require recusal. *See id.* Instead, Thomas argued that the district judge should recuse herself because she allegedly dismissed Thomas’s complaint and neglected to rule on a motion in a separate case. But adverse rulings are grounds for appeal, not recusal. *Liteky*, 510 U.S. at 555. And Thomas’s conclusory allegation that the district judge conflated felony and misdemeanor battery under Florida law comes nowhere close to the level of objective partiality necessary to mandate

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recusal. Accordingly, we affirm the district court's denial of Thomas's disqualification motion.

B. The District Court Properly Dismissed Thomas's Request for Injunctive Relief.

Turning to the merits of the district court's dismissal, we first address whether the district court abused its discretion when it dismissed Thomas's request to transfer his state criminal prosecution to a different court under *Younger's* abstention principle. It did not.

In *Younger*, the Supreme Court held that a federal court should not act to restrain an ongoing state criminal prosecution. 401 U.S. at 41. This principle "derives from the vital consideration of comity between the state and national governments[.]" 31 *Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003) (citation modified).

A court must abstain under *Younger* if: (1) the federal proceeding will interfere with an ongoing state court proceeding; (2) the state proceeding implicates important state interests; and (3) there is an adequate opportunity in the state proceeding to raise the federal claim. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982); 31 *Foster Children*, 329 F.3d at 1276. The plaintiff bears the burden of establishing that the state proceeding does not provide an adequate remedy for his federal claims. 31 *Foster Children*, 329 F.3d at 1279. And a federal court "should assume that state procedures will afford an adequate remedy, in the

absence of unambiguous authority to the contrary.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).

All three *Younger* prongs are met here. First, transferring Thomas’s state criminal prosecution to a different court would disrupt the normal course of his ongoing state prosecution. *See 31 Foster Children*, 329 F.3d at 1276. Second, a state criminal proceeding implicates important state interests, specifically the state’s police power. *See Johnson v. Florida*, 32 F.4th 1092, 1099 (11th Cir. 2022). Third, Thomas has not met his burden of showing that he cannot request a change of venue in his state prosecution. Although Thomas argued below and argues on appeal that the Florida court overseeing his criminal prosecution is systemically corrupt, his conclusory allegations do not overcome *Younger*’s recognition of comity and federalism, nor do they fit within this Court’s recognized exceptions to *Younger* abstention. *See Leonard*, 61 F.4th at 907, 911–14.

The district court did not abuse its discretion in dismissing Thomas’s request for injunctive relief under *Younger*. However, because dismissal under *Younger* does not reach the request’s merits, we vacate and remand to the district court with instructions to dismiss Thomas’s request for injunctive relief without prejudice.

C. Thomas’s Complaint Fails To State a Claim to Monetary Relief.

Thomas’s claims for damages are barred by the doctrines of judicial and prosecutorial immunity.

1. Thomas's Claims Against Judge Hitzemann Are Barred by Judicial Immunity.

District courts may dismiss claims barred by judicial immunity with prejudice. *See Bolin*, 225 F.3d at 1242 (affirming a district court's dismissal of claims barred by judicial immunity); *Silberman v. Miami Date Transit*, 927 F.3d 1123, 1133 (11th Cir. 2019) (explaining that district courts can dismiss a pro se complaint with prejudice if amendment would result in a non-viable claim).

"A judge enjoys absolute immunity from suit for judicial acts performed within the jurisdiction of his court." *McCullough v. Finley*, 907 F.3d 1324, 1330 (11th Cir. 2018). An action is judicial if its "nature and function" are judicial. *Id.* at 1330–31. A judge's motivation is irrelevant to this inquiry. *Id.* at 1331. Absolute immunity applies even when the judge's actions were erroneous, malicious, or exceeded the court's jurisdiction. *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (per curiam). This absolute immunity extends to state judges. *Stevens v. Osuna*, 877 F.3d 1293, 1301–02 (11th Cir. 2017) ("Absolute immunity is not reserved for Article III judges only."); *see Pierson v. Ray*, 386 U.S. 547, 553–54 (1967).

The district court correctly concluded that Judge Hitzemann was entitled to judicial immunity. Thomas claims that Judge Hitzemann violated his constitutional rights by denying a motion to dismiss and improperly amending the probable cause affidavit. These actions are textbook judicial acts and were within Judge Hitzemann's jurisdiction under Florida law. *See Sibley*, 437 F.3d at

1070; *McCullough*, 907 F.3d at 1330–31; Fla. Stat. § 34.01(1)(a) (giving county courts original jurisdiction over all misdemeanor cases not cognizable by the circuit courts); *id.* § 316.193(1)(a), (13)(c) (recognizing driving under the influence as a misdemeanor). Because Thomas’s claims concern judicial acts Judge Hitzemann took while presiding over Thomas’s criminal prosecution, the district court properly dismissed those claims with prejudice.

2. Thomas’s Claims Against Healion and Doty Are Barred by Prosecutorial Immunity.

A district court may also dismiss claims barred by prosecutorial immunity with prejudice. *Long v. Satz*, 181 F.3d 1275, 1279 (11th Cir. 1999). Prosecutors are absolutely immune from liability for activities “intimately associated with the judicial phase of the criminal process[.]” *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976) (“[I]n initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under § 1983.”).

Thomas alleges that Healion and Doty improperly amended a probable cause affidavit and thus pursued charges without probable cause. While the absence of probable cause, if true, may be grounds for the dismissal of charges, it is not grounds for holding prosecutors personally liable for money damages. Because Healion’s and Doty’s alleged wrongdoing concerns actions “intimately associated” with Thomas’s criminal prosecution, they are entitled to absolute immunity from damages. *See id.* at 430.

Thomas argues that the district court erred by dismissing his claims against Doty sua sponte before Thomas completed service

of process. This argument lacks merit. Generally, sua sponte dismissal is inappropriate if: (1) “the defendant has not filed an answer and the plaintiff still had a right to amend his complaint pursuant to Rule 15(a)”;

(2) the plaintiff “brought his claim in good faith”;

and (3) the district court did not notify the plaintiff of its intent to dismiss or give the plaintiff an opportunity to respond. *Am. United Life Ins. Co.*, 480 F.3d at 1057 (citing *Jefferson Fourteenth Assocs. v. Wometco de P.R., Inc.*, 695 F.2d 524, 527 (11th Cir. 1983)). But dismissal is permitted “without notice if the complaint is patently frivolous or if reversal would be futile.” *Tazoe*, 631 F.3d at 1336 (citation modified); see *Byrne v. Nezhat*, 261 F.3d 1075, 1127 n.99 (11th Cir. 2001) (“Reversal of a *sua sponte* dismissal without notice may not be mandated if amendment of the complaint would be futile or if it is patently obvious that the plaintiff could not prevail.” (citation modified)).

The district court did not err or abuse its discretion in sua sponte dismissing Thomas’s claims against Doty. It is patently obvious that Thomas’s claims against Doty would fail and any amendment to his suit would be futile. See *Byrne*, 261 F.3d at 1127 n.99; cf. *Silberman*, 927 F.3d at 1133 (finding futility where “a more carefully drafted complaint could not state a claim” (citation omitted)). Had Doty been served and moved to dismiss, the outcome would be the same. Because Thomas’s claims against Healion and Doty are virtually identical, Doty is protected by prosecutorial immunity too. We therefore affirm the district court’s dismissal of Thomas’s amended complaint.

IV. CONCLUSION

We **AFFIRM** the district court's denial of Thomas's disqualification motion and its with-prejudice dismissal of Thomas's claims for damages. However, we **VACATE** the with-prejudice dismissal of Thomas's claim for injunctive relief and **REMAND** with instructions to dismiss the claim without prejudice.