

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, RICHMOND DIVISION

William Parke Custis v. Richard Salter Phillips

Custis · No. 3:25cv775 (DJN) · Decided January 29, 2026

SUMMARY

The United States District Court for the Eastern District of Virginia dismissed a pro se Virginia inmate’s 42 U.S.C. § 1983 action against his former criminal defense attorney. The court held that private attorneys and public defenders do not act under color of state law when performing traditional defense-counsel functions, and dismissed the action as legally frivolous and for failure to state a claim.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Richmond Division
WRITING FOR THE COURT	David J. Novak
JURISDICTION	United States District Court for the Eastern District of Virginia, Richmond Division
DECIDED	January 29, 2026
DOCKET	3:25cv775 (DJN)
DISPOSITION	dismissed
PROCEDURAL POSTURE	A Virginia inmate proceeding pro se filed a 42 U.S.C. § 1983 complaint against the attorney who represented him in criminal proceedings. The district court screened the complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A and dismissed it.
STANDARD OF REVIEW	The court applied the PLRA screening standards under 28 U.S.C. §§ 1915(e)(2) and 1915A, including the familiar Federal Rule of Civil Procedure 12(b)(6) standard. Well-pleaded factual allegations were taken as true and viewed in the light most favorable to the plaintiff, but conclusory allegations were not entitled to an assumption of truth.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion

TOPICS

- section 1983
- prisoners rights
- motions to dismiss
- civil procedure
- civil rights

PRACTICE AREAS

prisoner civil rights

Section 1983 litigation

federal civil procedure

criminal defense counsel liability

QUESTIONS PRESENTED

1. Whether a § 1983 claim may be maintained against a private attorney or public defender for conduct undertaken while representing a criminal defendant.
2. Whether the complaint stated a legally cognizable § 1983 claim under the PLRA screening standards.

HOLDINGS

1. A private attorney or public defender does not act under color of state or federal law when performing traditional defense-counsel functions in criminal proceedings.
2. The complaint was subject to dismissal as legally frivolous and for failure to state a claim upon which relief may be granted.

KEY QUOTATIONS

“Private attorneys and public defenders do not act under color of state or federal authority when they represent defendants in criminal proceedings.”

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

FACTUAL BACKGROUND

William Parke Custis, a Virginia inmate proceeding pro se, sued Richard Salter Phillips under 42 U.S.C. § 1983. Phillips had served as Custis's attorney during criminal proceedings. Custis alleged only that Phillips had failed to zealously represent him.

PROCEDURAL HISTORY

Plaintiff filed a prisoner civil-rights complaint alleging that defense attorney Richard Salter Phillips failed to zealously represent him during criminal proceedings. Before service or further proceedings, the district court conducted mandatory PLRA screening and dismissed the complaint as legally frivolous and for failure to state a claim.

DISPOSITION

dismissed

CASES CITED

- Clay v. Yates, 809 F. Supp. 417, 427 (E.D. Va. 1992)
- Neitzke v. Williams, 490 U.S. 319, 327 (1989)
- Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992)

- Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 556, 570 (2007)
- Bass v. E.I. DuPont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003)
- Dickson v. Microsoft Corp., 309 F.3d 193, 213 (4th Cir. 2002)
- Iodice v. United States, 289 F.3d 270, 281 (4th Cir. 2002)
- Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978)
- Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring)
- Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985)
- Dowe v. Total Action Against Poverty in Roanoke Valley, 145 F.3d 653, 658 (4th Cir. 1998)
- Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981)
- Cox v. Hellerstein, 685 F.2d 1098, 1099 (9th Cir. 1982)

OPINION

Custis

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

WILLIAM PARKE CUSTIS,

Plaintiff, v. Civil No. 3:25cv775 (DJN)

RICHARD SALTER PHILLIPS,

Defendant.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate proceeding pro se, filed this 42 U.S.C. § 1983 action. The matter is before the Court for evaluation of Plaintiff's Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. For the reasons stated below, the Complaint (ECF No. 1), and the action will be DISMISSED.¹

I. PRELIMINARY REVIEW

Pursuant to the Prison Litigation Reform Act ("PLRA"), this Court must dismiss any action filed by a prisoner if the Court determines the action (1) "is frivolous" or (2) "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2); see 28 U.S.C. § 1915A. The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." *Clay v. Yates*, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). ¹ The Court employs the pagination assigned by CM/ECF docketing system. The Court corrects the capitalization, punctuation and spelling in the quotations from Plaintiff's submissions. "A motion to dismiss

under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356

(1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff’s well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); see also *Martin*, 980 F.2d at 952. This principle applies only to factual allegations, however, and “a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The Federal Rules of Civil Procedure “require[] only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (second alteration in original) (citation omitted). Plaintiffs cannot satisfy this standard with complaints containing only “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Id.* (citations omitted). Instead, a plaintiff must allege facts sufficient “to raise a right to relief above the speculative level,” *id.* (citation omitted), stating a claim that is “plausible on its face,” *id.* at 570, rather than merely “conceivable.” *Id.* “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). In order for a claim or complaint to survive dismissal for failure to state a claim, therefore, the plaintiff must “allege facts sufficient to state all the elements of [his or] her claim.” *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002); *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)). Lastly, while the Court liberally construes pro se complaints, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), it does not act as the inmate’s advocate, sua sponte developing statutory and constitutional claims the inmate failed to clearly raise on the face of his complaint. See *Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

II. SUMMARY OF ALLEGATIONS AND CLAIMS

In his Complaint, Plaintiff names as Defendant Richard Salter Phillips, his attorney during his criminal proceedings. (ECF No. 1 at 1.) Plaintiff contends that Phillips “failed to zealously represent” Plaintiff during his criminal proceedings. (*Id.* at 11.)

III. ANALYSIS

In order to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of either a constitutional right or a right conferred by a law of the United States. See *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). Private attorneys and public defenders do not

act under color of state or federal authority when they represent defendants in criminal proceedings. See, e.g., *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981) (“[A] public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.”); *Cox v. Hellerstein*, 685 F.2d 1098, 1099 (9th Cir. 1982) (holding that private attorneys do not act under color of state or federal law when representing clients). Therefore, Plaintiff’s claims against Phillips and the action will be DISMISSED as legally frivolous and for failure to state a claim upon which relief may be granted. The Clerk will be DIRECTED to note the disposition of the action for purposes of 28 U.S.C. § 1915(g). An appropriate Final Order will accompany this Memorandum Opinion. Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Plaintiff. /s/ David J. Novak United States District Judge Richmond, Virginia Dated: January 28, 2026