IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Twanda Marshinda Brown, et al., etc.,)) Plaintiffs,)) v.)) Lexington County, South Carolina, et al.,)) Defendants.))	Civil Action No. 3:17-1426-MBS **DEFENDANTS' REPLY TO PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION**

Defendants submit the following by way of reply to ECF No. 80, Plaintiffs' Objections to Report and Recommendation.

The R & R accurately summarizes Plaintiffs' factual and legal allegations for purposes of considering whether Plaintiffs' claims for prospective relief should be granted. ECF No. 74 at 1-11. Simply stated, the magistrate court cases of all of the Plaintiffs except Goodwin have ended. The R & R correctly indicates that Plaintiff Goodwin's case has not yet ended, noting that he has only made one payment of $100, when the total amount owed by him was $2,100. ECF No. 74 at 9, 10. Plaintiffs also point this out, ECF No. 80 at 28, and Defendants do not contend otherwise.

ARGUMENT

1. The R & R correctly held that Plaintiffs' damage claims against the three magistrates and the sheriff are barred by judicial or quasi-judicial immunity.

a. Judicial immunity (magistrates).

The R & R correctly held that all of Plaintiffs' claims against the magistrate are barred by judicial immunity. ECF No. 74 at 14-17. It is axiomatic that "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension

of personal consequences to himself," *Stump v. Sparkman*, 435 U.S. 349, 355 (1978), quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872). As recently summarized by this Court, this principle means that "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' ") (citation omitted)." *Ward v. Detective Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3575528, at *2 (D.S.C. July 26, 2017), report and recommendation adopted sub nom. *Ward v. Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3535057 (D.S.C. Aug. 17, 2017). It can hardly be disputed that each decision reached by each defendant magistrate in each Plaintiff's case was made in the exercise of a judicial function, and clearly within the jurisdiction of each magistrate.

The R & R noted these general principles, ECF No. 74 at 14. It held that Plaintiffs are, in effect, suing the magistrates for omissions, which are listed on p. 15 of the R & R. The R & R further held that the complained-of omissions "could only have been made by a judge, evidencing their judicial nature. . . ., and that Plaintiffs had provided no authority permitting a suit "based on a judge's alleged failure to prescribe how other judges should perform their judicial functions." *Id.* at 16. For those and other reasons set forth at pp. 14-17 of the R & R, the Magistrate Judge held that the "Judicial Defendants are entitled to absolute judicial immunity," and recommended dismissal of the claims against them. ECF No. 74 at 17.

Plaintiffs devote only one page of their 40-page objections to discussing judicial immunity for their damage claims against the magistrates. ECF No. 80 at 34-35.[1] There they rely primarily on only three cases for their attempt to apply the "administrative action" exception to

[1] Page references are to the original page numbers of the document rather than to the ECF page numbers.

judicial immunity.[2] Each is clearly inapposite. Plaintiffs first cite *Forrester v. White*, 484 U.S. 219 (1988), a case involving a judge's decision to dismiss a subordinate court employee, specifically, a probation officer. The Supreme Court unanimously held that it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 484 U.S.at 229. This holding stemmed from the Court's distinction between judicial acts and acts that simply happen to have been done by judges:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges.

484 U.S. at 227. The present case bears no similarity to the employment decision involved in *Forrester*. Instead, the acts of the magistrates were the "paradigmatic judicial acts" of adjudicating cases before them.

Another case cited by Plaintiffs is *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989), a case with unusual facts which, like those in *Forrester*, are completely different from the facts of the present case. In *Morrison*, the chief administrative judge of a judicial district declared a districtwide moratorium on the issuance of writs of restitution during the holiday period from December 15, 1986 through January 2, 1987. A litigant who wished to obtain such a writ during that period filed suit against the judge. The Sixth Circuit held that that action was administrative and not judicial. In the course of that holding, the court explained that the case did "not [involve] an adjudication between parties," but instead was "a general order, not connected to any

[2] Plaintiffs add a reference to *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993), but that case held only that a court reporter is not absolutely immune from damages liability for failing to produce a transcript of a federal criminal trial. It is therefore also inapposite. Plaintiffs also cite the equally-inapposite case of *Burton v. Infinity Capital Mgmt.*, 862 F.3d 740 (9th Cir. 2017), in which the creditor's counsel in a bankruptcy case was seeking to invoke quasi-judicial immunity.

particular litigation." 877 F.2d at 466. In addition, "[t]he order did not alter the rights and liabilities of any parties but, rather, instructed court personnel on how to process the petitions made to the court." *Id.* Finally, the court noted that a litigant offended by a judicial action can, "in the vast majority of cases, appeal the court's decision to a higher court; here, no direct appeal is available. . . ." *Id.* In the present case, of course, the magistrates' actions in the Plaintiffs' individual cases did involve adjudications, which were connected to particular cases, and which were not only appealable through the state court appeal process, but which should have been appealed if Plaintiffs desired to challenge them.

The third and final case cited by Plaintiffs is *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719 (1980). The Supreme Court held in that case that the propounding the Virginia Code of Professional Responsibility by the Virginia Supreme Court "was not an act of adjudication but one of rulemaking." 446 U.S. at 731. The Court further held, however, that

> Disciplinary rules are rules of general application and are statutory in character. They act not on parties litigant but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens. It is evident that, in enacting disciplinary rules, the Supreme Court of Virginia is constituted a legislature."

Id., quoting a dissent in the lower court in the case, 470 F.Supp. at 1064. From this it can readily be seen that the present case, unlike *Consumers Union*, did not involve rules of general application, but instead "act[ed] on parties litigant[,]" and arose out of controversies that needed to be litigated. In other words, the case is clearly inapposite on its facts.

Even if *Consumers Union* had involved similar facts, however, it still does not help Plaintiffs, but instead fully supports Defendants' hypothetical alternative contention that assuming without conceding that policies did exist, which Defendants vehemently deny, those

who promulgated them would enjoy absolute legislative immunity, as discussed by Defendants in a previous filing, ECF No. 50-1 at 10-11, which is incorporated herein by reference.

Again, it should be recalled that Plaintiffs were jailed as the result of individualized judicial orders in each of their cases. Those individualized actions, and not any such alleged general "policies" (or failures to adopt "policies"), were the cause of the serving of jail time by Plaintiffs. And again, even if these procedures had been the result of "policies," such policies would have been put into place in the exercise of either judicial or legislative functions.

Finally, while the damage claims against the magistrates and the sheriff are almost surely subject to dismissal based on the immunities discussed above and in the following paragraphs, those Defendants also submit that the damage claims against them are barred by *Heck v. Humphrey,* 512 U.S. 477 (1994) as well as by the *Rooker-Feldman* doctrine.[3] Defendants incorporate by reference the contentions set forth by Defendant Lexington County in the County's Objections to Report and Recommendation, ECF No. 79 at 9-12.

b. Quasi-judicial immunity (sheriff).

With regard to Sheriff Koon, the R & R held that "Plaintiffs have not alleged Koon or his deputies committed any constitutional violation independently of their actions in executing court-ordered bench warrants. Plaintiffs have also failed to identify how any of Koon's alleged administrative actions deprived them of their constitutional rights." ECF No. 74 at 19.

In their objections, Plaintiffs argue nothing different from this. They contend that the sheriff should be liable for "establishing and enforcing the standard operating procedures followed by [Lexington County Sheriff's Department] and Detention Center personnel in relation to the unlawful arrest and incarceration of indigent people on payment bench warrants."

[3] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

ECF No. 80 at 34. However, this argument does not address the above-quoted holding in the R & R. If anything, Plaintiffs' objections merely confirm that the R & R accurately described Plaintiffs' contentions.

It is well settled that absolute quasi-judicial immunity extends to non-judicial officers, such as the sheriff in this case, when "performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Reaves v. Rhodes*, 2011 WL 826358, at *5 (D.S.C. 2011), report and recommendation adopted, 2011 WL 812413 (D.S.C. 2011), quoting *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir.1994). Specifically, *Reaves* holds that a sheriff is absolutely immune for arresting a plaintiff pursuant to a facially valid court order, and for enforcing facially valid court orders. As a result, Plaintiffs should not be heard to argue that Defendant Koon, in acting pursuant to the bench warrants, performed anything other than a quasi-judicial function for which he is entitled to quasi-judicial immunity. The R & R should therefore be adopted on this point.

2. The R & R correctly held that Plaintiffs' claims for prospective relief are moot.

Simply stated, the R & R concluded that the September 15, 2017, memorandum from Chief Justice Beatty, requiring among other things that all defendants in the state facing criminal charges carrying possible imprisonment be fully informed of their right to counsel, has rendered moot the claims of the Plaintiffs for prospective relief. ECF No. 74 at 12-13. Anticipating Plaintiffs' response to this conclusion, the R & R added that the Beatty memorandum made it clear that the complained-of conduct is not likely to recur. ECF No. 74 at 13 n.4.

As the R & R anticipated, Plaintiffs do indeed attempt to argue that the Chief Justice's memorandum should not be held to render their claims moot. ECF No. 80 at 20-26. However, Plaintiff's argument on this point completely omits reference to the well-settled principle that

governmental actors are subject to a lighter burden in this regard. *See, e.g., Stauffer v. Gearhart*, 741 F.3d 574 (5th Cir. 2014):

> In an ordinary case, subsequent events would have to make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. [ ] Stauffer's argument, however, ignores the lighter burden that government entities bear in proving that the challenged conduct will not recur once the suit is dismissed as moot. [ ]
>
> [G]overnment actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties. Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.

741 F.3d at 582 (citations and internal quotation marks omitted). The state action involved in the present case, a directive issued by the Chief Justice of South Carolina, presents a particularly apropos situation for the application of the above rule, in the interest of federal-state comity. As one court has stated in a different context, "Nothing in . . . general principles of federalism, suggests that it is either necessary or appropriate in these circumstances for a federal court to hover over a state court that in presumed good faith seeks to discharge its responsibilities under the United States Constitution and relevant law. . . ." *Wilkinson v. Forst*, 717 F. Supp. 49, 52 (D. Conn. 1989). In fact, in at least one case, the federal issue was held to be moot, virtually without discussion, because of the promulgation of a rule by the Supreme Court of Georgia. *Attwell v. Nichols*, 608 F.2d 228, 230-231 (5th Cir. 1979), cert. denied, 446 U.S. 955 (1980**)**.

To be sure, there are some instances in which government agencies, particularly executive agencies, have been held not to have provided sufficient evidence that the complained-of conduct will not recur. One such situation was illustrated in *Porter v. Clarke*, 852 F.3d 358, (4th Cir. 2017), cited by Plaintiffs at p. 22 of their objections, where it was held that "[i]n the context of litigation regarding the policies governing prisoners' conditions of confinement, in

particular, courts have refused to find a challenge to an abandoned policy or practice moot when the prison refuses either to "promise [ ] not to resume the prior practice [citations omitted] or to otherwise "unambiguously terminate[ ]" the challenged practice. . . ." 852 F.3d at 365. Plaintiffs also cite *Wall v. Wade*, 741 F.3d 492 (4th Cir. 2014), ECF No. 80 at 22, another case involving prison administration, but in that case, the defendants' claim that the former policy would not be reinstated was unsupported by any evidence at all. In addition, the policy involved in *Wall* had changed three times in only a few years, a situation not present here.

Instead, the present case involves a pronouncement from the state's Chief Justice, the head of the unified judicial system, about how magistrates are to handle specific issues pertaining to the constitutional rights of indigent criminal defendants. That pronouncement in September 2017 has been followed by extensive revisions to forms and procedures. Those revisions and other pronouncements from Court Administration were formalized by orders signed by Chief Justice Beatty in February 2018. *See* Ex. 1, attached, and discussed below.[4] This is not a situation in which magistrates would feel free to ignore the Chief Justice's directions; indeed, if they were to do so, it is possible that they would be subjected to disciplinary action by the Chief Justice. Nor is this a situation in which the Chief Justice, a nonparty to this action, might be expected to reverse course after this litigation ends, especially in light of the extensive procedural revisions set forth in Exhibit 1.

Plaintiffs cite evidence during the first 24 days following the Chief Justice's memorandum to the effect that the provisions of the memorandum had not yet been fully

[4] Exhibit 1 is filed pursuant to 28 U.S.C. § 636(b)(1), which provides that a district court may "receive further evidence" in the course of considering objections to a Report and Recommendation. Everything in Exhibit 1 was finalized after the R & R was issued on February 5, 2018. In addition, Exhibit 1 consists completely of public documents that are subject to judicial notice. The existence of these policies should suffice to support a holding that discovery as to the implementation of the memorandum is not necessary.

implemented in that short timeframe. ECF No. 80 at 26. However, it was to be expected that it would take some time for the practical effects of the Chief Justice's memorandum to be understood and implemented by summary court judges. At the annual Mandatory Program for summary court judges on November 1, 2017, the office of court administration set forth the practical requirements of the Chief Justice's September 2017 Memorandum in considerable detail. *See* Exhibit 1, p. 1 (March 14, 2018, Court Administration memorandum outlining procedures discussed at that program). In addition to that 8-page memorandum, Chief Justice Beatty has recently, on February 23, 2018, signed two administrative orders further implementing those procedures, and promulgating a total of seven new or revised forms intended to insure that imprisonment does not occur unless the defendant is "informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial." September 15, 2017, memorandum at 1. For instance, on the third page of the March 14, 2018 Court Administration memorandum (p. 4 of Exhibit 1), under "Remedy for Nonpayment," the memorandum states, "Not imprisonment! No issuance of a bench warrant or rule to show cause!" The memorandum further notes that "If you want to incarcerate a Defendant in one of the above situations, he must be rescheduled and informed of his right to counsel. No TIA [trial in absentia] unless Defendant has waived counsel by conduct or affirmative waiver." *Id.* This part of the memorandum, as well as the accompanying forms, alleviate Plaintiffs' concern that indigent defendants might be arrested without probable cause or "automatically incarcerated." ECF No. 80 at 29. The remainder of the memorandum, as well as the additional orders of the Chief Justice and the revised forms, are all directed toward insuring that no one is incarcerated for summary-court-level offenses in the absence of being informed of the right to counsel in a meaningful manner.

In addition to claiming that their claims are not moot as a matter of law, Plaintiffs also argue that the Chief Justice's memorandum does not, as a factual matter, fully address their concerns. They assert that the September memorandum "does not even mention, much less enforce, the Fourteenth Amendment requirement that a person must be afforded an ability-to-pay hearing before incarceration for nonpayment of a fine." ECF No. 80 at 29. However, the recent implementing memorandum provides that

> i. In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case **shall**, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a **reasonable** payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual.

Memorandum of March 14, 2018, part of Exhibit 1, attached, third page (emphases in original). The same Memorandum later provides that "If after trial, Defendant has a jail sentence suspended upon payment of fine and Defendant does not pay the fine, the court must perform Bearden v. Georgia, 461 U.S. 660 (1983) analysis," and then spells out in great detail the factors that must be considered in the requisite ability-to-pay hearing. *Id.*, seventh page. Also, and as noted earlier, the Court Administration memorandum expressly provides for ""Not imprisonment! No issuance of a bench warrant or rule to show cause!" Any concern of Plaintiffs that Chief Justice Beatty did not address Plaintiffs' concerns in the present case are therefore unfounded.

In light of this very detailed and mandatory approach taken by Chief Justice Beatty and Court Administration, it simply cannot be said that the state's judicial system is offering the revised procedures as part of some kind of temporary effort to render the present case moot, as Plaintiffs appear to imply. Based on these developments, and on the authorities cited above

involving official discontinuance of challenged actions, Defendants respectfully submit that the Magistrate Judge's recommendations should be adopted on this issue.

3. Alternatively, Plaintiffs' claims for prospective relief should be dismissed on the grounds of mootness, absence of a case or controversy, and the application of *Younger v. Harris*, 401 U.S. 37 (1971).

Defendants submit that while the developments discussed above are more than sufficient to render moot the claims of Plaintiffs for nonmonetary relief, those claims could also be dismissed on other grounds of mootness and absence of a case or controversy, or, in the case of Plaintiff Goodwin, whose case is still pending, based on *Younger v. Harris*, 401 U.S. 37 (1971). These grounds are set forth in detail in Defendants' Memorandum in Support of Motion for Summary Judgment on Declaratory and Injunctive Relief, ECF No. 29-1, and in Defendants' Reply Memorandum filed in support of that motion. ECF No. 39.

To summarize the above-referenced two memoranda, which are incorporated herein by reference, Defendants would show that it is uncontested that the criminal cases of all Plaintiffs except Goodwin are now ended. Plaintiffs' claim of a "substantial and imminent threat of being arrested and incarcerated for nonpayment of magistrate court fines and fees" is based on an assumption which the courts have consistently declined to entertain, that is, the assumption that a person will reoffend. To the contrary, it must instead be assumed that "[plaintiffs] will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974). *O'Shea*, a landmark case in the area of standing and case or controversy, is still in full force and effect today. *See, e.g., Simic v. City of Chicago*, 851 F.3d 734, 738 (7th Cir. 2017).

The claims of Plaintiff Goodwin, whose criminal case has not yet ended, cannot be asserted in this Court because they would require the court to insert itself into an ongoing criminal prosecution, in violation of the precepts of *Younger v. Harris, supra*. Accordingly, while the directives of Chief Justice Beatty and South Carolina Court Administration should suffice to warrant dismissal of Plaintiffs' claims for declaratory and injunctive relief, as the R & R recommends, the case could also be dismissed on the alternative grounds set forth above.

4. The R & R correctly held that Plaintiffs' nonmonetary claims against the three magistrates and the sheriff are barred by judicial or quasi-judicial immunity.

If this Court adopts the recommendation that Plaintiffs' claims for prospective relief are moot, it will not be necessary to address immunity issues in connection with those claims. While recognizing the possibility that the issue may not need to be addressed, the R & R concluded that those claims are in any event barred by the express language of 42 U.S.C. § 1983, as amended in 1996. ECF No. 74 at 19. That language provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." Plaintiffs have offered very little opposition to this conclusion. ECF No. 80 at 27-29. Such opposition as they do offer does not include any case in which a judge was a defendant.

Plaintiffs also make an argument, eight lines long, that they are suing the magistrates and the sheriff as administrators. However, that argument is unavailing, for the reasons set forth in Point 1 above and in the portions of the R & R referenced therein.

5. The claims of Plaintiff Goodwin for declaratory relief are barred by abstention principles.

On pp. 39 and 30 of Plaintiffs' Objections, it is argued that Plaintiff Goodwin's claims against Defendant Adams seek only declarative relief and therefore should be permitted to

continue. However, and while the R & R did not need to reach this issue, a request for declaratory relief under these circumstances is barred by the same principles applied in *Younger v. Harris*, 401 U.S. 37 (1971) to bar injunctive relief when a criminal proceeding is ongoing. *Samuels v. Mackell*, 401 U.S. 66 (1971). Mr. Goodwin, on May 5, 2017, signed a payment plan requiring him to make payments of $100 per month, starting on June 5, 2017. Other than perhaps making the first $100 payment, he has not made any payments pursuant to that plan, and as a result could be subject to further proceedings in his criminal case as a result of that failure. In other words, the criminal proceeding against him is undoubtedly still ongoing, and is therefore subject to abstention under *Younger* and *Samuels.*

5. The R & R correctly recommended that class certification should be denied.

Given that Plaintiffs' claims for declaratory and injunctive relief should be denied for several different reasons as set forth above, it follows that the Court should also adopt the recommendation that class certification should be denied. ECF No. 74 at 13.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court adopt those portions of the Report and Recommendation that recommend dismissal of Plaintiffs' claims.

Respectfully submitted,

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