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 **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR RECONSIDERATION**

Defendants have moved this Court to reconsider, amend or alter the Court's March 29, 2018 Order (ECF No. 84, entered March 30, 2018). In that Order, the Court declined to accept the Report and Recommendation of the Magistrate Judge. However, in so holding, the Order did not address or discuss certain filings made by Defendants, as set forth herein.

The pertinent procedural history of this matter is as follows: After the initial pleadings were filed in this case, Defendants on August 18, 2017 filed a Motion for Summary Judgment with regard to Plaintiffs' claims for declaratory and injunctive relief. ECF No. 29. The basis for the motion was that the claims of all but one Plaintiff were moot and no longer involved live cases or controversies, and the claims of that one remaining Plaintiff, who still had (and has) a criminal action pending against him are barred by the principles of *Younger v. Harris*, 401 U.S. 37 (1971). Subsequent developments are discussed below in more detail.

While that motion was pending, Chief Justice Beatty on September 15, 2017, issued a memorandum to South Carolina magistrate and municipal Judges, requiring that all defendants in the state facing criminal charges carrying possible imprisonment be fully informed of their right

to counsel, and if indigent, their right to court-appointed counsel prior to trial. Shortly thereafter, on September 25, 2017, Defendants then filed a Supplemental Motion for Summary Judgment on the declaratory and injunctive relief claims, contending that even if the first summary judgement motion were to be disregarded, the Betty memorandum rendered moot the issue of failure of magistrates in the future to provide counsel for indigent persons facing possible sentences of imprisonment. ECF Nos. 40, 40-1. Plaintiffs responded on October 13, 2017, claiming that as of that date, which was shortly after the Beatty memorandum was issued, some Lexington County magistrates were not yet complying with the memorandum. Defendants, not wishing to engage in voluminous discovery while the original motion was still pending, then filed a motion to stay the supplemental motion, that is, the one based on the Beatty memorandum. ECF No. 49. Defendants noted that "The [supplemental] motion could be taken up at a future time if necessary, if the original Motion for Summary Judgment, ECF No. 29, is not granted, or if [subsequent] events . . . clarify any questions about the implementation of Chief Justice Beatty's memorandum." ECF No. 49 at 3.

Plaintiffs opposed the motion to stay. However, after further filings and discussions between the Magistrate Judge's chambers and the parties, it was agreed that the best thing to do was for the Defendants to withdraw both the second Motion for Summary Judgment (the one based on the Beatty memorandum) and the subsequent motion to stay consideration of that motion. This was done by the Defendants by the filing of a Notice indicating that Defendants were withdrawing those two motions. ECF No. 62, filed 11/21/17.

The Report and Recommendation, ECF No. 74, while making passing reference to the original motion (*see* ECF No. 74 at 2), elected instead to make a *sua sponte* recommendation that the declaratory and injunctive relief claims be dismissed as a result of the Beatty memorandum.

In so concluding, the Report and Recommendation noted that "Chief Justice Beatty's memorandum makes clear the policies of the state courts and the undersigned finds the complained-of conduct/policies cannot be reasonably expected it to recur." ECF No. 74 at 13 n. 4. This Court, however, pointed to Plaintiffs' contention that in the first 24 days following the issuance of the memorandum, there were still people incarcerated after being arrested on bench warrants, although Plaintiffs did not indicate whether or not those persons had been afforded the opportunity to obtain counsel. Defendants had not addressed that contention because as noted above, they moved to stay their motion that was based on the Beatty memorandum.

The end result reached by the Magistrate Judge was to recommend that Defendants' first Motion for Summary Judgment as to declaratory and injunctive relief be granted, ECF No. 74 at 21, although in reality, the Magistrate Judge had concluded *sua sponte* that the prospective claims had been rendered moot by the Beatty memorandum. The Report and Recommendation did not actually opine one way or the other about the issues raised by the Defendants in their first Motion for Summary Judgment.

As already noted, this Court rejected that recommendation by the Magistrate Judge, holding that

> [a]fter reviewing the record, the court finds there is an issue of material fact as to the application of Chief Justice Beatty's Memorandum in Magistrate Court and whether the alleged conduct could not reasonably be expected to recur. Therefore, the court denies Defendants' motion for summary judgment as to declaratory and injunctive relief.

ECF No. 84 at 28. In fact, however, there was no pending motion by the Defendants with regard to the Beatty memorandum.

After the Report and Recommendation was issued, Defendants did, in their Reply to Plaintiffs' Objections, contend that the Beatty memorandum, along with subsequent actions by

Chief Justice Beatty South Carolina and Court Administration, made it clear that the complained-of action were unlikely to recur. ECF No. 82 at 6-11, citing ECF No. 82-1, a 21-page attachment of recent actions by Chief Justice Beatty South Carolina and Court Administration. Those contentions are addressed in Point 2 herein..

The end result is that as of the filing of the present motion, neither the Magistrate Judge nor this Court have addressed or considered the grounds set forth in Defendants' original Motion for Summary Judgment on Plaintiffs' claims for prospective relief. Defendants pointed out in their Reply to Plaintiffs' Objections that even if the Court did not accept the recommendation based on the Beatty memorandum, prospective relief should still be denied because of the grounds set forth in support of Defendants' original motion, i.e., mootness or absence of a case or controversy in the cases of the individual Plaintiffs and *Younger v. Harris* concerns. ECF No. 82 at 11-12, summarizing and incorporating by reference the contentions made in support of the original motion. The present motion is filed in part to request that this Court address and rule on those issues.

APPLICABLE LAW

Rule 54(b), FRCP, provides that "any order . . . may be revised at any time before entry of a judgment adjudicating all of the claims and all the parties' rights and liabilities." *See Nationwide Mutual Fire Ins. Co. v. Superior Solution, LLC*, C/A No. 2:16-cv-423-PMD, 2016 WL 6648705, at *2 (D.S.C. 2016) ("An interlocutory order is subject to reconsideration at any time prior to the entry of a final judgment."); *Cohens v. Maryland Dep't of Human Resources*, 933 F. Supp. 2d 735, 741 (D. Md. 2013) ("Resolution of the motion is committed to the discretion of the district court . . . and the goal is to reach the correct judgment under law."). Rule 54(b), FRCP, motions are "not subject to the strict standards applicable to motions for

reconsideration of a final judgment[,]" but "district courts in the Fourth Circuit generally look to Rule 59(e)'s standards for guidance." *Superior Solution*, C/A No. 2:16-cv-423-PMD, 2016 WL 6648705, at *2 (internal citations and quotation marks omitted. "The ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law." *Equal Employment Opportunity Comm'n v. McLeod Health, Inc.*, C/A No. 4:14-cv-3615-BHH, 2016 WL 6823371, at *2 (D.S.C. 2016) (internal citation and quotation marks omitted).

Under Rule 59(e), relief is warranted "if the court has misapprehended the facts, a party's position or the controlling law." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009). Rule 59(e) relief also is appropriate when there is "a mistaken decision by the court of issues outside those presented for determination." *See Selvidge for and on Behalf of Selvidge v. United States*, 1995 WL 89016, at *1 (D. Kan. 1995). In addition,

> in assessing a motion to reconsider an interlocutory order under Rule 54(b), these standards are not applied with the same strictness as they would be if the order were a final judgment and reconsideration were sought under Rule 59(e). *Am. Canoe Ass'n [v. Murphy Farms]*, 326 F.3d [505] at 514–15. The standards are applied even less stringently when the issue for which reconsideration is sought implicates the court's subject matter jurisdiction. *See id*. at 515–16. . . .

South Carolina v. United States, 232 F. Supp. 3d 785, 793 (D.S.C. 2017)(emphasis added). As will be shown herein, the grounds for the present motion involve jurisdictional issues almost exclusively.

ARGUMENT

1. The Order did not address or consider the points raised in Defendants' original Motion for Summary Judgment on Plaintiffs' claims for declaratory and injunctive relief.

As noted above, neither the Report and Recommendation nor the Court's March 29 Order addressed or discussed the merits of Defendants' original motion for summary judgment. The

grounds for that motion were set forth in the memorandum and reply memorandum filed in support of it. ECF Nos. 29-1, 39. Plaintiffs' contentions were set forth in their response in opposition. ECF No. 35. While Defendants would refer the Court to the cited memoranda for the full version of Defendants' contentions, those contentions are summarized in the following paragraphs.

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).[1]

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, even if the directives of Chief Justice Beatty and South Carolina Court Administration are held not to

[1] It does not assist Plaintiffs for them to argue that their claims are transitory and that their case or controversy problem could be solved by class certification. In fact, any individual who is still involved in a pending criminal prosecution is barred by *Younger* principles from maintaining a federal action to enjoin the state prosecution. As was held in *Aiona v. Judiciary of State of Hawaii*, 17 F.3d 1244, 1250 n. 10 (9th Cir. 1994), "[a]ny possible plaintiffs either would have license revocation proceedings pending in state court, in which case *Younger* abstention applies, or would be collaterally attacking final state judgments, in which case the *Rooker/Feldman* doctrine applies"); *accord, Anthony v. Council*, 316 F.3d 412, 424 (3d Cir. 2003).

warrant dismissal of Plaintiffs' claims for declaratory and injunctive relief, the case should still be dismissed for the reasons set forth above.

With regard to whether the Court should consider this issue at present, Defendants would submit that there is nothing in the March 29 Order specifically indicating that the Court had considered or intended to reject Defendants' contentions as made in the original motion for summary judgment and as summarized in the preceding paragraphs. Defendants are therefore not attempting to reargue a point on which the Court has already opined. Instead, Defendants ask the Court to rule on the aforementioned issues that the Court does not appear to have considered.

It is frequently held that "[a] motion to reconsider is appropriate where the court has obviously misapprehended a party's position or the facts or applicable law. . . ." *United States v. Grayson*, 2011 WL 9347462, at *1 (N.D.W. Va. 2011), *aff'd*, 435 F. App'x 225 (4th Cir. 2011); *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)("a motion for reconsideration is appropriate where the court has misapprehended . . . a party's position").

Here, it appears that the Court may have been working under the misapprehension that the Defendants were relying exclusively on the mootness issue raised by the Beatty memorandum, when in fact the Defendants had withdrawn their motion based on that memorandum. The only reason the issue was addressed in the Report and Recommendation was that the Magistrate Judge raised it *sua sponte*. The Defendants did contend in response to Plaintiffs' objections to the Report and Recommendation that the Court could validly adopt the recommendation to dismiss the prospective claims based on the Beatty memorandum and subsequent actions to ensure its enforcement, but the Defendants also reiterated the contentions on which they had primarily relied, that is, the claims raised in the original Motion for Summary Judgment on the prospective relief claims, ECF No. 29. The Court's March 29 Order therefore

contained "an error not of reasoning but of apprehension," such as would warrant reconsideration. *South Carolina v. United States*, 232 F. Supp. 3d 785, 799 (D.S.C. 2017).

2. The Order did not address or consider the additional evidence of very recent actions by Chief Justice Beatty and South Carolina Court Administration submitted by Defendants in their reply to Plaintiffs' objections to the Report and Recommendation.

In conjunction with ECF No. 82, their Reply to Plaintiffs' Objections to Report and Recommendation, Defendants attached a 21-page exhibit detailing 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, so they could not have been provided to the Magistrate Judge prior to the issuance of the Report and Recommendation. ECF No. 82-1.[2] The Order of March 29 at p. 18 noted the filing of ECF No. 82, Defendants' Reply, but did not discuss the additional material supplied by the Defendants in ECF No. 82-1, which was filed just a week before the March 29 Order. Defendants request that the March 29 Order be reconsidered on this point as well, because that Order appears to have misapprehended the fact that this additional support had been placed before the Court in support of the recommendation of the Magistrate Judge. The authorities previously cited above support reconsideration of this issue as well.

The March 29 Order noted that Plaintiffs cited evidence during the first 24 days following the Chief Justice's memorandum to the effect that there had been additional bench warrants and imprisonments during that period. ECF No. 84 at 27-28. (Plaintiffs did not say

[2] ECF No. 82-1 was 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 ECF No. 82-1 was finalized after the Report and Recommendation was issued on February 5, 2018. In addition, ECF No. 82-1 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.

whether those imprisonments occurred without counsel being afforded to those individuals or waived by them.) In any event, 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* ECF No. 82-1, p. 2 (March 14, 2018, Court Administration memorandum outlining procedures discussed at that program).

In addition to that 8-page memorandum, Chief Justice Beatty 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, ECF No. 82-1 at ,5 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.

The Supreme Court has made it very clear that "States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). That is why 42 U.S.C. § 1983, as amended in 1996, 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." Even declaratory relief affecting state judges is disfavored. *Samuels v. Mackell*, 401 U.S. 66 (1971). These principles were reiterated in *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982), which held that "[m]inimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights."

For the reasons set forth above and in ECF No. 82, Defendants submit that there can be no doubt that the Chief Justice and Court Administration have put into place a number of mandates intended to ensure that counsel will be appointed, or an express waiver required, in summary court cases such as those that involved the present Plaintiffs. Counsel for Plaintiffs have shown that they are able to research public records in order to determine whether the judges are complying with the mandates of the Chief Justice and Court Administration. If such noncompliance still persists, which seems unlikely in view of the extensiveness of the state judicial system's efforts, Plaintiffs' counsel would be able to identify it without the need for discovery from the Defendants. If Plaintiffs' counsel, in opposition to the present motion, cannot point to any cases in Lexington County in which the problem persists, then Plaintiffs' claims for

prospective relief should be dismissed based on mootness resulting from the remedial actions of the Chief Justice and Court Administration.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this motion be granted, and that Plaintiffs' claims for prospective relief be denied either on the grounds set forth in Defendants' original motion pertaining to such relief, ECF No. 29, or because the actions of Chief Justice Beatty and Court Administration have rendered this action moot.

Respectfully submitted,

DAVIDSON, WREN & PLYLER, P.A.

BY: s/ Kenneth P. Woodington
WILLIAM H. DAVIDSON, II, Fed. I.D. No. 425
KENNETH P. WOODINGTON, Fed. I.D. No. 4741

DAVIDSON, WREN & PLYLER, P.A.
1611 DEVONSHIRE DRIVE, 2ND FLOOR
POST OFFICE BOX 8568
COLUMBIA, SOUTH CAROLINA 29202-8568
wdavidson@dml-law.com
kwoodington@dml-law.com
T: 803-806-8222
F: 803-806-8855

ATTORNEYS for Defendants

Columbia, South Carolina

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