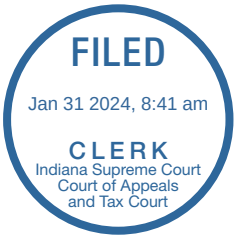
MEMORANDUM DECISION



APPELLANT PRO SE

Kevin Martin
Pendleton Correctional Facility
Pendelton, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kevin Martin,
Appellant-Plaintiff,

v.

John Broden, John Marnocha, and Kaitlyn Holmecki,
Appellee-Defendants.

January 31, 2024

Court of Appeals Case No. 23A-CT-936

Appeal from the St. Joseph Circuit Court

The Honorable Graham C. Polando, Magistrate

Trial Court Cause No. 71C01-2212-CT-000486

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] On December 2, 2022, Kevin Martin filed a lawsuit against Judge John Broden, Judge John Marnocha, and Kaitlyn Holmecki in connection with a public records request Martin submitted on June 28, 2022. Because Martin is currently incarcerated, the trial court screened Martin's complaint under Indiana Code sections 34-58-1-1 through -4. The trial court ultimately dismissed Martin's complaint pursuant to Indiana Code section 34-58-1-2(a). Martin now appeals and presents three issues for our review, which we consolidate and restate as the following single issue: Whether the trial court erred in dismissing Martin's complaint pursuant to Indiana Code section 34-58-1-2.

[2] We affirm.

Facts and Procedural History

[3] On March 14, 2007, a jury convicted Martin of murder, and he was sentenced to 65 years at the Indiana Department of Correction. On direct appeal, we affirmed Martin's conviction. *Martin v. State*, 878 N.E.2d 545, No. 71A03-0707-CR-323, slip op. (Ind. Ct. App. Dec. 31, 2007), *trans. denied*.[1]

[1] The State asserts that "Martin was denied post-conviction relief, twice" and in support cites *Martin v. State*, 35 N.E.3d 675, No. 10A01-1409-PC-419, slip op. (Ind. Ct. App. June 17, 2015), *trans. denied*, as well as *Martin v. State*, 202 N.E.3d 430, No. 22A-PC-102, slip op. (Ind. Ct. App. Dec. 14, 2022), *trans. denied*. Appellee's Br. at 7. The State misreads the cited cases. The first case cited by the State concerns the post-conviction relief petition filed by Richard Dean Martin, who was convicted of six counts of Class A felony child molesting. *Martin*, No. 10A01-1409-PC-419, slip op. at ¶ 3–4. The second case cited by the State

[4] On June 24, 2022, Martin submitted a Request for Access to Public Record to Judge Broden of the St. Joseph Circuit Court (the "Request").[2] On July 13, 2022, the Clerk for the St. Joseph Superior Court filed the Request in cause number 71D02-0607-MR-000012—Martin's murder case—to which Judge Marnocha was assigned. In the Request, Martin sought video recordings of police interviews as well as documents related to results of a test on three bullets introduced at his 2007 murder trial that he believed were part of the discovery. There is no indication in the record that Judge Broden, Judge Marnocha, or anyone acting on their behalf responded to the Request; thus, we consider the Request denied pursuant to Indiana Code section 5-14-3-9(c)[3].

[5] On July 21, 2022, Martin filed a complaint with the Public Access Counselor (the "Records Complaint") alleging the St. Joseph Circuit Court violated the Access to Public Records Act (the "APRA").[4] Six days later, Holmecki, a public access coordinator for the Public Access Counselor, sent Martin a letter

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concerns the post-conviction relief petition filed by Anthony C. Martin, who was convicted of Class B felony robbery, Class D felony resisting law enforcement, and for being a habitual offender. *Martin*, No. 22A-PC-102, slip op. at ¶ 3. Obviously, neither of these cases concern Kevin L. Martin, the appellant here, who was convicted of murder. The State's glaring errors violate Appellate Rules 22(C) and 46(A)(8)(a), both of which require a party to accurately represent relevant facts.

[2] Martin does not include the Request in his Appendix. Nevertheless, because the Request was filed in Martin's underlying murder case, we have taken judicial notice of the Request pursuant to Appellate Rule 27.

[3] "If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request." I.C. § 5-14-3-9(c).

[4] Martin does not include this complaint in his Appendix. Instead, he includes a blank copy of State Form 49407, which is the form used to file complaints with the Office of the Public Access Counselor. Appellant's App. Vol. II at 18.

informing him that the Public Access Counselor had rejected Martin's complaint (the "Letter"). Holmecki explained:

> You requested from the Court copies of records from 2006. It is important to note that the requested documents would not have been kept by the court over 15 years after they were created. In fact, most trial materials would not need to be kept that long. Furthermore, the Access to Public Records Act is NOT a mechanism to relitigate decided cases.

Appellant's App. Vol. II at 18.

[6] On December 2, 2022, Martin filed a lawsuit against Judge Broden, Judge Marnocha, and Holmecki, (collectively, the "Defendants") seeking $700 million in damages pursuant to Section 1983 of Title 42 of the United States Code for the Defendants' alleged violations of the APRA, which Martin argued resulted in violations of his rights under the First and Fourteenth Amendments to the United States Constitution. After a series of recusals and transfers from different courts and judges, the trial court screened Martin's complaint and ultimately dismissed it pursuant to Indiana Code section 34-58-1-2(a). This appeal ensued.[5]

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[5] We observe that Martin failed to comply with several Appellate Rules. For instance, Martin includes irrelevant facts in his Statement of Facts in violation of Appellate Rule 46(A)(6). Appellant's Br. at 6. His Summary of the Argument is "a mere repetition of the argument headings," which violates Appellate Rule 46(A)(7). *Compare* Appellant's Br. at 7 *with id.* at 8, 10, 19. Most importantly, Martin fails to provide cogent argument regarding the reasons the trial court dismissed his complaint. *Id.* at 8–19. Although Martin is pro se, our case law is clear: "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind.

Discussion and Decision

The Trial Court Did Not Err in Dismissing Martin's Complaint under Indiana Code Section 34-58-1-2

[7] Martin contends the trial court erred in dismissing his complaint. We review de novo a trial court's decision to dismiss an offender's complaint pursuant to Indiana Code section 34-58-1-2. *Taylor v. Antisdel*, 185 N.E.3d 867, 872 (Ind. Ct. App. 2022) (citing *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*), *trans. denied*, 199 N.E.3d 781 (Ind. 2022). Like the trial court, we look only to the well-pleaded facts contained in Martin's complaint. *See Smith*, 907 N.E.2d at 555 (citing *Smith v. Huckins*, 850 N.E.2d 480, 484 (Ind. Ct. App. 2006)). We may affirm the trial court's judgment on "any basis in the record." *Taylor*, 185 N.E.3d at 872–73 (citing *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013)).

[8] The trial court screened and dismissed Martin's complaint pursuant to Indiana Code sections 34-58-1-1 through -3. Indiana Code section 34-58-1-1 provides: "Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the

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2014) (citing *In re G.P.*, 4 N.E.3d 1158 (Ind. 2014)). As such, Martin must comply with the Appellate Rules. *See Z.C. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 213 N.E.3d 1101, 1108 (Ind. Ct. App. 2023) (quoting *Martin v. Hunt*, 130 N.E.3d 135, 137 (Ind. Ct. App. 2019)), *trans. not sought*. Nevertheless, in recognition of our well-established preference for addressing claims on their merits, we choose to address the merits of Martin's claim. *See Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015).

review required by [Section 34-58-1-2]." Section 34-58-1-2, in turn, provides in relevant part:

> (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
>
> (1) is frivolous;
>
> (2) is not a claim upon which relief may be granted; or
>
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.

If a court determines that a claim may not proceed under Section 34-58-1-2, "the court shall enter an order: (1) explaining why the claim may not proceed; and (2) stating whether there are any remaining claims in the complaint or petition that may proceed." Ind. Code § 34-58-1-3.

[9] Here, Martin does not dispute that he is an offender within the meaning of Indiana Code section 34-6-2-89(b) such that his complaint is subject to the screening process described above. Reading Martin's complaint so "as to do substantial justice," Ind. Trial Rule 8(F), it appears that Martin alleges the Defendants denied the Request, thereby denying Martin his Fourteenth Amendment right to equal protection, his Fourteenth Amendment right to due process, and his First Amendment right to free speech, Appellant's App. Vol. II at 8–14. In other words, Martin appears to assert claims against the Defendants

pursuant to Section 1983 of Title 42 of the United States Code. Martin requests relief in the form of $700 million in damages.

[10] Martin argues only that the trial court dismissed his complaint because he failed to state a claim upon which relief may be granted. However, a fair reading of the trial court's order reveals that the trial court dismissed Martin's complaint because the Defendants are all entitled to immunity from monetary damages here and because Martin's claims are frivolous.

The Trial Court Did Not Err by Dismissing Martin's Complaint Because the Defendants Are Immune from the Relief Martin Seeks

[11] Martin concedes that "both Judge (1) Broden and (2) Marnocha are absolutely immune from any suit arising out of the performance of their judicial duties." Appellant's Br. at 14. However, he appears to claim that Judge Broden and Judge Marnocha acted outside the scope of their judicial duties. As another panel of this court recently explained:

> It is well-settled that judges are entitled to absolute judicial immunity from suits for money damages for all actions taken in the judge's judicial capacity, unless those actions are taken in the complete absence of any jurisdiction. . . . In determining whether a person is entitled to judicial immunity, the United States Supreme Court has established a functional approach, where the court looks to the nature of the function performed, not the identity of the actor who performed it.

Marion Superior Ct. Prob. Dep't v. Trapuzzano, 223 N.E.3d 282, 288 (Ind. Ct. App. 2023) (internal citations, quotation marks, and alterations omitted).

[12] Martin does not present any cogent argument concerning whether the handling of the Request falls outside of a judge's judicial duties. We thus assume for purposes of this opinion that Judge Broden's and Judge Marnocha's denial of the Request were actions taken in their judicial capacity and thus subject to judicial immunity.

[13] Martin alleges in his complaint that Holmecki had a responsibility to investigate the Records Complaint. Appellant's App. Vol. II at 11. Assuming Holmecki has the authority to exercise all the powers of the Public Access Counselor, the Public Access Counselor has a duty to issue an advisory opinion on any formal complaint received regarding a public agency's denial of a public records request. I.C. §§ 5-14-4-10(6), 5-14-5-9. The Public Access Counselor does not have the duty to respond to a public records request on behalf of another public agency or to otherwise compel a response from a public agency. *See id.* § 5-14-4-10. Even if the Public Access Counselor had such a duty, Holmecki's actions in that capacity would be entitled to qualified immunity.

[14] "The doctrine of qualified immunity shields 'federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct.'" *Perry v. Ind. Dep't of Child Servs.*, 196 N.E.3d 1264, 1269–70 (Ind. Ct. App. 2022) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)), *trans. denied*, 208 N.E.3d 1254 (Ind. 2023). A right is "clearly established" for purposes of qualified immunity "when, at the time the challenged conduct occurred, the contours of a right are sufficiently

clear that every reasonable official would have understood that what he is doing violates that right." *Id.* (citing *D.C. v. Wesby*, 583 U.S. 48, 63 (2018)).

[15] Martin did not plead sufficient facts to show that he has a clearly established Fourteenth Amendment right and First Amendment right to obtain court records. Martin also did not plead sufficient facts to show that Holmecki violated such rights by communicating the Public Access Counselor's denial of the Records Complaint. Therefore, we cannot say that the trial court erred by dismissing Martin's complaint because it seeks monetary relief from the Defendants who are all immune from liability for such relief.

The Trial Court Did Not Err by Dismissing Martin's Complaint Because It Is Frivolous

[16] Even if the Defendants are not entitled to immunity from Martin's claim—thereby making the trial court's dismissal of Martin's complaint clearly erroneous on that ground—the trial court did not err in dismissing Martin's complaint because it is frivolous. A claim is frivolous under Section 34-58-1-2(a)(1) if the claim:

> (1) is made primarily to harass a person; or
>
> (2) lacks an arguable basis either in:
>
> (A) law; or
>
> (B) fact.

I.C. § 34-58-1-2(B).

[17] The only relief Martin seeks in his complaint is $700 million in damages. Martin has not pled sufficient facts to show he has been directly damaged in the amount of $700 million. To the extent Martin's request for damages is a request for punitive damages, he has not alleged sufficient facts to show the Defendants acted with malicious intent or that aggravating circumstances existed, as is required in Section 1983 actions. *See Kellogg v. City of Gary*, 562 N.E.2d 685, 711 (Ind. 1990) (citing *Endicott v. Huddleston*, 644 F.2d 1208, 1217 (7th Cir. 1980)).

[18] Because Martin lacks an arguable basis in fact for his stated damages, his complaint is clearly frivolous. As such, we cannot say the trial court erred by dismissing Martin's complaint due to its frivolousness.

Conclusion

[19] In sum, Martin's complaint seeks monetary relief from the Defendants who are immune from liability for such relief and it is frivolous. We therefore hold that the trial court did not err in dismissing Martin's complaint pursuant to Section 34-58-1-2(a).

[20] Affirmed.

Bailey, J., and May, J. concur.