

United States Court of Appeals  
for the Fifth Circuit

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No. 23-60393  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 5, 2024

Lyle W. Cayce  
Clerk

SEDRIC Q. SUTTON,

*Plaintiff—Appellant,*

*versus*

CHARLTON SMITH, *Deputy Sheriff of Washington County, Mississippi;*  
DWIGHT DONHAM, *Deputy Sheriff of Washington County, Mississippi;*  
HONORABLE MARGARET CAREY-MCCRAY, *Circuit Court Judge of*  
*Washington County, Mississippi;* LYNN FITCH, *Attorney General of*  
*Mississippi,*

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 4:22-CV-114

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Before DAVIS, WILLETT, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Plaintiff-Appellant, Sedric Q. Sutton, proceeding *pro se*, appeals the dismissal of his suit pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56(f)(3). We AFFIRM.

## I.

Sutton alleges various constitutional and state-law violations against the Attorney General of Mississippi, Lynn Fitch, two Deputy Sheriffs of Washington County, Charlton Smith and Dwight Donham, and Circuit Court Judge of Washington County, Judge Margaret Carey-McCray. Sutton’s claims stem from underlying events that occurred in July 2014 when Defendants Smith and Donham obtained a search warrant for “stolen items” located at 331 Muscadine Street in Greenville, Mississippi.<sup>1</sup> During the execution of the warrant, law enforcement officers detained Sutton and found \$4,995 in cash, a handgun, two digital scales, and sixty pills of hydrocodone and acetaminophen.<sup>2</sup> Sutton was taken into custody and subsequently indicted by a grand jury on two counts: (1) possession of a controlled substance with intent to distribute and (2) possession of a firearm by a convicted felon.<sup>3</sup> After a jury trial, Sutton was convicted on the first count and sentenced as a habitual offender to fifteen years.<sup>4</sup>

Sutton appealed his conviction and sentence. In 2018, the Mississippi Supreme Court reversed and remanded Sutton’s conviction after concluding that “[a]ll of the State’s evidence in the case stemmed from an unconstitutional search pursuant to an invalid warrant which failed

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<sup>1</sup> *Sutton v. State (Sutton I)*, 238 So. 3d 1150, 1153 (Miss. 2018).

<sup>2</sup> *Id.* at 1153 & n.2.

<sup>3</sup> *Id.* at 1153-54.

<sup>4</sup> *Sutton v. State (Sutton II)*, 337 So. 3d 208, 209 (Miss. 2022).

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adequately to describe the property to be seized by the executing officers.”<sup>5</sup>  
On remand, the trial judge entered an order of nolle prosequi.<sup>6</sup>

Sutton subsequently filed a complaint for wrongful conviction and imprisonment under Mississippi Code Sections 11-44-1 to -15<sup>7</sup> in the Circuit Court of Washington County, Mississippi. The trial court granted the State’s motion for summary judgment after concluding that Sutton had not created a genuine issue of material fact that he did not commit the felony for which he was sentenced.<sup>8</sup> The Mississippi Supreme Court affirmed the trial court’s judgment, holding that Sutton’s conviction was reversed “based on legal insufficiency” and not on grounds “inconsistent with innocence.”<sup>9</sup> The Court additionally concluded that there was “no merit in Sutton’s argument that he possessed the hydrocodone pills for ongoing medical ailments [and thus] . . . did not commit a felony.”<sup>10</sup>

On July 26, 2022, Sutton filed the instant lawsuit in federal court, based on the same underlying events as his state-court lawsuit. Sutton alleges three causes of action in his complaint: (1) Deputy Sheriffs Smith and Donham violated his Fourth Amendment rights by conducting an illegal search and seizure pursuant to an invalid search warrant; (2) Judge Carey-

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<sup>5</sup> *Sutton I*, 239 So. 3d at 1153.

<sup>6</sup> *Sutton II*, 337 So. 3d at 210.

<sup>7</sup> Mississippi Code Section 11-44-1 provides that “[i]n light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the provisions of this chapter that innocent people who are wrongfully convicted be able to receive monetary compensation.” MISS. CODE ANN. § 11-44-1.

<sup>8</sup> *Sutton II*, 337 So. 3d at 210.

<sup>9</sup> *Id.* at 212-13.

<sup>10</sup> *Id.* at 213.

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McCray<sup>11</sup> and Attorney General Fitch denied him necessary medical treatment during his trial and incarceration in violation of his Eighth Amendment and due process rights under the Fourteenth Amendment; and (3) a claim against Attorney General Fitch for compensation under Mississippi's wrongful conviction and imprisonment statute. Sutton seeks \$999,999,999,999 in damages.

Defendants Judge Carey-McCray, Smith, and Donham moved to dismiss Sutton's claims. The district court<sup>12</sup> granted the motion and dismissed Sutton's claims against Smith and Donham, which arose in 2014, as time barred under Mississippi's three-year statute of limitations. The court additionally dismissed Sutton's claims against Judge Carey-McCray under the doctrine of judicial immunity. In its dismissal order, the district court gave Sutton and Attorney General Fitch notice, pursuant to Rule 56(f)(3),<sup>13</sup> of its "intent to consider summary judgment on the plaintiff's claim for cruel and unusual punishment and wrongful conviction against the State of Mississippi." After providing the parties with an opportunity to respond, the district court dismissed Sutton's remaining claims against Attorney General Fitch as barred by *res judicata* in light of Sutton's prior

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<sup>11</sup> As noted by the district court, although Sutton's complaint names Judge Carey-McCray as a defendant, it contains no factual allegations against her. Instead, the complaint makes allegations against "the court" and "the trial court," which the district court read as referring to Judge Carey-McCray given that she presided over Sutton's criminal trial.

<sup>12</sup> Because the parties consented to have all proceedings, including entry of final judgment, conducted by a magistrate judge, we will refer to the judge as the district court. *See* 28 U.S.C. § 636(c).

<sup>13</sup> Rule 56(f) provides that after a district court gives notice and time for the parties to respond, it may "consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute." FED. R. CIV. P. 56(f)(3).

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wrongful conviction lawsuit that was dismissed with prejudice in state court, or alternatively as barred by the three-year statute of limitations.

Sutton filed a motion for reconsideration under Rule 59(e), which the district court denied. Sutton timely appealed.

## II.

Sutton appeals the district court's dismissal of his claims under Rules 12(b)(6) and 56(f)(3).<sup>14</sup> On appeal, he raises two issues. First, Sutton contends that the district court erred in dismissing his claims against Donham and Smith on the grounds that these officers should not be entitled to qualified immunity for executing an invalid search warrant. Second, Sutton asserts that he was wrongfully convicted of a felony—possession of a Schedule III controlled substance with intent to distribute—and instead his actions constituted a misdemeanor.

Sutton's arguments are unavailing. As an initial matter, Sutton's appellate brief does not contend the district court erred in dismissing his claims against Judge Carey-McCray. Therefore, these claims are deemed abandoned.<sup>15</sup> And although Sutton renews his Fourth Amendment and state-law wrongful conviction claims against the remaining Defendants, he does not challenge the district court's holdings that these claims are barred by *res*

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<sup>14</sup> We review *de novo* both the district court's grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6) and the grant of summary judgment under Rule 56(f)(3). See *White v. U.S. Corr., L.L.C.*, 996 F.3d 302, 306 (5th Cir. 2021) (motion to dismiss); *Bradley v. Sheriff's Dep't St. Landry Par.*, 958 F.3d 387, 390-91 (5th Cir. 2020) (summary judgment).

<sup>15</sup> See *Norris v. Causey*, 869 F.3d 360, 373 n.10 (5th Cir. 2017) (noting that "a failure to adequately brief an issue constitutes abandonment" (citing *Weaver v. Puckett*, 896 F.2d 126, 128 (5th Cir. 1990))); FED. R. APP. P. 28(a)(8)(A) (requiring an appellant's opening brief to contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

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*judicata* and the statute of limitations. Because Sutton neither addresses nor identifies any error in the judgments being appealed, it “is the same as if he had not appealed th[ose] judgment[s].”<sup>16</sup> Accordingly, we AFFIRM the district court’s dismissal of Sutton’s claims.

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<sup>16</sup> *Brinkman v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) (“Although we liberally construe the briefs of pro se appellants, we also require that arguments must be briefed to be preserved.” (internal quotation marks and citation omitted)).