

United States Court of Appeals for the Fifth Circuit

No. 26-50024
Summary Calendar

MICHAEL DAVID BYRUM,

Plaintiff—Appellant,

versus

GEORGE W. BUSH, *Governor, 1995-2001*; JOHN AND/OR JANE DOE, *State's Attorney General, 1995-2001*; RICK PERRY, *Governor, 2001-2015*; JANE JOHN DOES, *State's Attorney General, 2000-*; ET AL.,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:25-CV-694

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Michael David Byrum, former Texas prisoner # 1012085 and current Texas Civil Commitment Center resident # 06391934, filed a 42 U.S.C. § 1983 complaint naming over 500 defendants. In his complaint, Byrum sought monetary compensatory and punitive damages from each defendant,

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

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his release from the custody of the Texas Civil Commitment Office, and to compel the Texas State Legislature to revisit the state law pertaining to civil commitments.

Because the district court dismissed Byrum's Eighth and Fourteenth Amendment claims for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), we review that ruling under the same de novo standard that applies to a dismissal under Federal Rule of Civil Procedure 12(b)(6). *See DeMoss v. Crain*, 636 F.3d 145, 152 (5th Cir. 2011). The facts alleged in the complaint must be taken as true and viewed in the light most favorable to the plaintiff. *Green v. Atkinson*, 623 F.3d 278, 280 (5th Cir. 2010). Nonetheless, a complaint will not proceed unless it "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted).

In essence, Byrum argues that the defendants violated his Eighth and Fourteenth Amendment rights by failing to provide him with treatment while he was incarcerated and, as a result, he is now civilly committed. Regarding his Eighth Amendment claim, he fails to state a claim that the defendants acted with deliberate indifference towards his medical needs. *See id.* at 679; *see also Cleveland v. Bell*, 938 F.3d 672, 676 (5th Cir. 2019). Similarly, he has failed to state a claim that the defendants violated his procedural or substantive due process rights under the Fourteenth Amendment. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); *McClendon v. City of Columbia*, 305 F.3d 314, 325-26 (5th Cir. 2002) (en banc).

Additionally, Byrum fails to show that the district court erred in concluding that the state legislators were immune from liability. *See Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998); *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951); *Hughes v. Tarrant Cnty. Tex.*, 948 F.2d 918, 920 (5th Cir. 1991).

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Similarly, the court correctly concluded that a habeas application was the appropriate mechanism for Byrum to pursue release from his civil commitment, *see Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), and that it was without power to grant the requested mandamus relief, *see Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013); *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 412 (5th Cir. 2004). Lastly, the district court did not err when it denied Byrum's motion for the appointment of counsel, *see Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982), and the appointment of counsel on appeal is likewise not warranted, *see id.*; *Cooper v. Sheriff, Lubbock Cnty.*, 929 F.2d 1078, 1084 (5th Cir. 1991).

The judgment of the district court is AFFIRMED. Byrum's motion for the appointment of counsel is DENIED.