

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TREMAIN V. SCOTT,

Plaintiff,

v.

CASE NO. 19-3053-SAC

KANSAS ATTORNEY GENERAL,

Defendant.

ORDER OF DISMISSAL

This matter is a civil rights action filed by a prisoner in federal custody. Plaintiff sues the Kansas Attorney General and claims the defendant knows the identity of the person who shot plaintiff but has failed to press charges.

Background

On April 5, 2019, the Court entered a Notice and Order to Show Cause (NOSC) directing plaintiff to show cause why this matter should not be dismissed due to the defendant's absolute prosecutorial immunity. On April 18, 2019, the Court directed plaintiff to submit an initial partial filing fee to the clerk of the court on or before May 6, 2019. On May 10, 2019, the Court overruled plaintiff's objection to the initial partial filing fee and his motion to appoint counsel and granted his request for an extension of time to respond to the NOSC and to submit the partial filing fee.

On May 24, 2019, plaintiff submitted a motion to supplement/amend the complaint. On June 19, 2019, the Court entered an order noting that while the motion to supplement/amend did not seek any specific amendment, it included a request that, if the Court denied his motion, it dismiss the complaint without prejudice to allow plaintiff to

pursue requests under the Freedom of Information Act. The Court directed plaintiff to clarify on or before July 1, 2019, whether he sought to voluntarily dismiss the matter and advised him that if he failed to respond, the Court would rule on the present record.

Plaintiff did not respond, nor has he submitted the initial partial filing fee.

Discussion

As the Court explained in its NOSC, the defendant is entitled to absolute immunity from liability for acts related to the advocacy role, including the decision not to file charges. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) (ordinarily, so long as the prosecuting officer has probable cause, "the decision whether or not to prosecute...generally rests entirely in his discretion.").

Having considered the record, the Court dismisses this matter on the ground that the sole defendant is shielded by prosecutorial immunity. In addition, the plaintiff has failed to submit the initial partial filing fee as directed by the Court.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for failure to state a claim for relief.

IT IS FURTHER ORDERED plaintiff's motions to proceed in forma pauperis (Docs. 3 and 6) and to supplement/amend the complaint (Doc. 10) are denied.

IT IS SO ORDERED.

DATED: This 26th day of July, 2019, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge