

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

**CHARLES H. MOORE, JR.,**

**Plaintiff,**

**v.**

**CASE NO. 19-3226-SAC**

**DANIEL VOKINS, et. al,**

**Defendants.**

**MEMORANDUM AND ORDER**

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is detained at the Johnson County Adult Detention Center in Olathe, Kansas. On December 10, 2019, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 5) (“MOSC”), granting Plaintiff until January 10, 2020, in which to show good cause why his Complaint should not be dismissed for the reasons set forth in the MOSC. Plaintiff has failed to respond to the MOSC by the Court’s deadline.

The allegations in Plaintiff’s Complaint involve his state criminal proceedings. Plaintiff alleges that on August 20, 2019, he was falsely arrested at his home and detained on charges of criminal threat and obstruction. Plaintiff alleges that these charges were “made up prior to [him] being arrested.” Plaintiff alleges that he has been locked in segregation since his arrest and is being “denied all [his] rights.”

Plaintiff alleges that he sent a text message to someone stating “stay away from me or I will break your neck for putting a false eviction notice on my home,” and it was used as an excuse to arrest him for criminal threat. Plaintiff alleges that the judge raised his bail amount for

no reason and that Plaintiff's motions to the judges have all been ignored. Plaintiff names four state court judges as Defendants and seeks release from unjust imprisonment.<sup>1</sup>

The Court held in the MOSC that Plaintiff alleges no facts whatsoever to suggest that the defendant judges acted outside of their judicial capacities, and Plaintiff's claims against the state court judges should be dismissed on the basis of judicial immunity. A state judge is absolutely immune from § 1983 liability except when the judge acts "in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (articulating broad immunity rule that a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority . . ."); *Hunt v. Bennett*, 17 F.3d 1263, 1266 (10th Cir. 1994). Only actions taken outside a judge's judicial capacity will deprive the judge of judicial immunity. *Stump*, 435 U.S. at 356–57.

The Court also found that Plaintiff's only request for relief is release from imprisonment. Such a challenge must be brought in a habeas action. "[A] § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, *but not to the fact or length of his custody.*" *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (emphasis added). When the legality of a confinement is challenged so that the remedy would be release or a speedier release, the case must be filed as a habeas corpus proceeding rather than under 42 U.S.C. § 1983, and the plaintiff must comply with the exhaustion of state court

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<sup>1</sup> Plaintiff has also filed a "Criminal Complaint" (Doc. 3.) This Court cannot order criminal charges and cannot order State courts to open or close cases. *See Presley v. Presley*, 102 F. App'x 636, 636–37 (10th Cir. 2004) (holding that any federal court order for "investigation or prosecution of various people for various crimes" would "improperly intrude upon the separation of powers"); *Alexander v. Lucas*, 259 F. App'x 145, 148 (10th Cir. 2007) (holding that the *Rooker-Feldman* doctrine barred plaintiff's request that the federal district court order a State-court judge to grant relief). In addition, to add claims, significant factual allegations, or change defendants, a plaintiff must submit a complete amended complaint. *See Fed. R. Civ. P. 15*. An amended complaint is not simply an addendum to the original complaint, and instead completely supersedes it. Therefore, any claims or allegations not included in the amended complaint are no longer before the court. It follows that a plaintiff may not simply refer to an earlier pleading, and the amended complaint must contain all allegations and claims that a plaintiff intends to pursue in the action, including those to be retained from the original complaint.

remedies requirement. *Heck v. Humphrey*, 512 U.S. 477, 482 (1994); *see also Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000) (exhaustion of state court remedies is required by prisoner seeking habeas corpus relief). “Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court. In other words, the state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas petition.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999); *see Woodford v. Ngo*, 548 U.S. 81, 92 (2006); *Rose v. Lundy*, 455 U.S. 509, 518–19 (1982). Therefore, any claim seeking release from imprisonment is not cognizable in a § 1983 action. The Court also found that it may be prohibited from hearing Plaintiff’s claims under *Younger v. Harris*, 401 U.S. 37, 45 (1971).

Plaintiff has failed to respond to the MOSC by the deadline and has failed to show good cause why his Complaint should not be dismissed for the reasons set forth in the MOSC.

**IT IS THEREFORE ORDERED BY THE COURT** that this matter is **dismissed**.

**IT IS SO ORDERED.**

**Dated January 14, 2020, in Topeka, Kansas.**

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