IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DYTRELL JONES,

Appellant,

vs.

Case No: 21-13961
Dist. Court No: 3:21-cv-179

FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Appellees.
_____/

APPEAL FROM THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

APPELLEES' ANSWER BRIEF

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APPELLEE'S CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Circ. R. 26, undersigned counsel hereby certifies Appellees' Certificate of Interested Persons ("CIP") and state that, to the best of their knowledge, the following individuals and entities have an interest in the disposition of this case:

1. Anand, Easha, counsel for Appellant
2. Carter, J.M., Defendant/Appellee
3. Famada, Omar., fmr. counsel for Appellees
4. Florida Department of Corrections, Defendant/Appellee
5. Howard, Marcia M., U.S. District Judge for the Middle District of Florida
6. Jones, Dytrell, Plaintiff/Appellant

7. Oyer, David, counsel for Appellant

8. Parrish, Assistant Warden, Defendant/Appellee

9. Polk, Warden, Defendant/Appellee

10. Roderick & Solange MacArthur Justice Center

12. Sharma, Ravi, Assistant Attorney General, counsel for Appellees

13. Toomey, Joel Barry, U.S. Magistrate Judge

Pursuant to 11th Circ. R. 26.1-3(b) and Fed. R. App. 26.1, undersigned counsel, **hereby certifies** that, to the best of undersigned's knowledge, the Corporate Disclosure statement is not applicable.

/s/Ravi N. Sharma
Ravi N. Sharma, Esq
Assistant Attorney General

STATEMENT REGARDING ORAL ARGUMENT

The correctness of the District Court's actions can be adequately demonstrated by the record provided. The Court's understanding of this cause would not be enhanced by the appearance of counsel for oral argument.

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STATEMENT OF JURISDICTION

This Court has jurisdiction over the decision of the United States Court for the Middle District of Florida pursuant to Title 28 U.S.C. §1291.

STATEMENT OF THE ISSUES

Appellant filed suit against the Appelless in a 42 U.S.C. §1983 complaint, alleging that Appellees had violated his U.S. Constitution Eighth Amendment rights by confining him to an unsanitary cell while housed at the Hamilton Correctional Institution Annex. Appellant alleged Appellees were deliberately indifferent to his serious medical needs. The District Court granted the Appellees Motion to Dismiss Appellant's failure to state a claim under an Eighth Amendment violation, for U.S. Constitution Eleventh Amendment immunity of the Appellees in their official capacities, and for mootness, due to Appellant having been transferred to a different correctional institution. The issues before this Court are:

1. Whether its proper for Appellant to bring up a U.S. Constitution First Amendment and Eighth Amendment violation for the first time on appeal.

2. Whether the District Court erred in law or fact in denying Appellant's Eighth Amendment claim as to the conditions of his confinement.

3. Whether the question of damages is properly before this Court.

4. Whether the District Court abused its discretion in dismissing Appellant's complaint.

PRELIMINARY STATEMENT

Appellant Dytrell Jones will be referred to as "Jones" or "Appellant." Hamilton Correctional Instiuttion will be referred to as "Hamilton." Appellees will be referred to as "Appellee <name>" individually, or "Appellees" as a whole. Citations to Appellant's Brief will be made by referring to the brief as "AB", followed by the page number referenced. [For example, "AB at 1"].

The Honorable Marcia M. Howard, United States District Judge, of the United States District Court, Middle District of Florida, Jacksonville Division, will be referred to as the "lower tribunal" or the "District Court."

Citations to the record on appeal will be made by referring to the appropriate docket document number, followed by the page number. [For example, "Doc. 1 at 1."]

STATEMENT OF THE CASE

Appellant Dytrell Jones is an inmate incarcerated with the Florida Department of Corrections, who filed suit under 42 U.S.C. § 1983 alleging he was confined to an unsanitary cell which caused him physical and emotional injury in violation of the Eighth Amendment. Appellant alleged Appellees were deliberately indifferent to Appellant's complaints. He now asks this Court to reverse the District Court's order granting Appellees' Motion to Dismiss.

A Course of Proceedings

On November 4, 2020, Appellant filed a pro se 42 U.S.C. § 1983 Civil Rights Complaint in the United States District Court Northern District of Florida (Doc. 1). On February 23, 2021, the Northern District transferred the case to the Middle District of Florida. (Doc. 20 and 21). Plaintiff alleged that the Appellees had violated his Eighth Amendment constitutional rights by subjecting Appellant to unsanitary living conditions, causing him both physical and emotional injury, while incarcerated at Hamilton. Id.

Appellant requested $150,000 from each Appellee in their

individual capacities, $100,000 in punitive damages from each Appellee in their individual capacities; $3,500 in nominal damages; medical expenses, cost of litigation, and injunctive relief in the form of an order requiring "adequate santiation procedure[s] to further prevent inhumane living conditions in confinement." Id. at 4.

On June 18, 2021, Appellees filed a Motion to Dismiss arguing that (1) Appellant failed to state a claim for an Eighth Amendment violation of rights; (2) Appelles were entitled to Eleventh Amendment immunity against monetary damages to the extent they were sued in their official capacities; (3) Appellant's request for injunctive relief was moot; and (4) Appellant was not entitled to damages due to his injuries being de minimus. (Doc. 31).

On September 13, 2021, Appellant filed his "Reply to Defendant's Motion to Dismiss," (Doc. 36) arguing in support of Appellant's requested injunctive relief by alleging that prison officials at Hamilton were not complying with Department policies and procedure regarding facility cleanliness. Id. at 5-6. Lastly, that Appellant's injuries may be more than de minimus under the PLRA,

and as such, alleging Appellant could still receive monetary relief for punitive and nominal damages. Id.

On October 13, 2021, the lower tribunal agreed with all four arguments presented by Appellees, and ordered the case dismissed with prejudice (Doc. 40) entering such judgment the same day. (Doc. 41). Specifically, the District Court found that Appellees were (1) properly entitled to Eleventh Amendment immunity in their official capacities (Doc. 40 at 7); (2) that Appellant's request for injunction was moot due to his transferring to a different institution (Id. at 8); (3) Appellant never alleged anything more than a *de minimis* injury (Id. at 11); and (4) Appellant failed to state a claim for relief of an Eighth Amendment violation on the merits of his pleading. Id. at 11-15. Because Appellant failed to state a claim for relief, his case was dismissed with prejudice. Id. at 16.

On November 4, 2021, Appellant filed a Notice of Appeal. (Doc. 42).

B Plaintiff's Allegations Below

Appellant alleged he is an S-3 mental health inmate, who is

mentally impaired "with an extraordinary[ly] extensive severe mental health record." (Doc. 1 at 5)

1. On February 7, 2020, the Appellant was housed at Hamilton in administrative confinement "under investigation pending no disciplinary actions." Id. The Appellant alleged that while in Golf dormitory in cell 2209L, the toilet continuously clogged limiting his ability to use it, that a foul smell emanated from the sink throughout the day with insects crawling out of it, that the sink spigot had green, white, and black mold or mildew on it, and that the tap water from this spigot was his only source of water outside of his three meals a day. Id.

3. Appellant alleged he was subsequently moved to a different cell within Hamilton, where he then complained of mold and mildew on his window and air vent, and that insects and rodents were entering his cell. Id.

4. Appellant alleged that Appellee Warden Polk and Appellee Assistant Warden Parrish inspected the facility at least once a week and were aware of the issues regarding sanitary conditions at the facility. Id. at 5-6.

5. Appellant alleged that in August 2020, the Appellant declared a psychological emergency due to the "filth of confinement." Id. The Appellant alleged that on an unknown date, Appellee Carter instructed the Appellant to stand under a cell light "in a bias[ed] manner" that caused the Appellant to "experience spontaneous psychotic episodes" and "uncontrollable outbursts." Id. at 6. Upon returning to his cell, Appellant's alleged that his cellmate refused to let Appellant into the cell, which then the Appellant was placed "in the mildew infested [showers][1] for nearly 8 hours if not more." Id.

6. Sometime after August 2020, the Appellant was moved to Cell H-3106 in H-dormitory, with subsequent allegations that in this new cell he was breathing in mold and mildew, which is "caked up in the window and cell vent." Id. The Appellant alleged that insects and rodents were entering his cell, and that the conditions of his cell were known to Appellee Warden Polk, Appellee Warden Parish, and Carter have ignored the Plaintiff's attempts to remedy the situation. Id. at 7.

7. In one undated event, the Appellant "went into a psychotic episode yelling 'I can get sick drinking from this mildew infested sink.

[1] The Appellees assume that the Appellant misspelled the word "shows" when he intended to write "showers" in his complaint.

I am a Human and deserved to be treated like one. What are [y'all] inspecting every week…[Y'all walk by like [y'all] are scientist studying lab rats that are being tested.'" Id. Appellant alleged that Appellee Carter utilized chemical agents on the Appellant and placed him on property restriction for five days, however, it is unclear whether the use of chemical agents by Appellee Carter occurred before or after the previously referenced psychotic episode. Id.

8. On another unknown date, the Appellant alleged that he contracted a skin infection "from the filth" in his cell and was subsequently treated with calamine lotion and therapeutic gel shampoo. Id. at 7-8. The Plaintiff alleges that this infection caused "excruciating pain." Id. at 8. The Plaintiff also experienced episodic psychotic outbursts caused by "not being able to cope with the continuum conditions of filth, insects, and attitudes of [the Appellees]." Id.

STANDARD OF REVIEW

The district court's grant of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is subjected to de novo review, accepting the allegations in the complaint as true and

construing them in the light most favorable to the plaintiff. Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003); Monzon v. U.S., 253 F.3d 567, 569-70 (11th Cir. 2001).

An appellate court will review the facts and circumstances surrounding the district court's action…to determine whether dismissal *with prejudice* is an abuse of discretion. Moser v. Universal Engineering Corps. 11 F.3d 720, 724 (7th Circ. 1993).

SUMMARY OF THE ARGUMENT

Appellant has raised, for the first time in his initial brief before this Court, a U.S. Const. First Amendment retaliation claim. This claim was not indicated or delineated in Appellant's initial complaint, nor in his response in opposition to the Appellees' Motion to Dismiss. It is improperly before this Court as it fails to overcome the exceptional requirements under which a "first on appeal" claim can properly be brought before a Court.

The District Court properly determined that Appellant failed to state a claim for an Eighth Amendment violation. He did not plead, or prove, any level of injury beyond *de minimus*. Even construing the pleading liberally, the injury meets none of the tenets illustrated in

case law to support it meeting this bar, in addition to the merits of his claim of unsanitary living conditions being thrwarted by the fact that Appellant never contested the prison providing him cleaning supplies with which to clean his cell. This is specifically mentioned in an exhibit grievance file Appellant attached to his complaint, yet speciously omitted when he presented his arguments against the Appellees.

The district court analyzed Appellant's requested relief in his complaint, and properly determined he was not entitled to compensatory, punitive, or nominal damages.[2] Appellant did not prove he had more than a *de minimis* injury in support of compensatory damages, nor did he prove that the Appellees conducted themselves maliciously or willfully towards the Appellant. As to his final claim of nominal damages, Appellant did not prove he suffered any cognizable constitutional violation. As that is the base requirement for considering whether to award nominal damages, Appellant's complaint fell short of even that threshold requirement.

[2] Appellant states he presents no argument against the mootness of complaint's injunctive relief, or contests the Appellees are afforded Eleventh Amendment sovereign immunity. AB at 6, footnote 3.

Lastly, the district court properly dismissed, with prejudice, Appellant's complaint in this case. Appellant argues that allowing him instead to "amend" his pleading would have been appropriate, given he was a *pro se* litigant. However, Appellant *did* have an opportunity to amend his complaint when he filed his Response in opposition to Appellees' Motion to Dismiss. The law of this Court does not need to provide endless opportunities to amend a complaint, when two attempts did not make the claims any more cognizable, and where further attempts would simply be a waste of judicial resources and the equitable rights of the Appellees. not to avail himself.

ARGUMENTS

A district court judgment will be sustained if it can be affirmed on any ground, regardless of whether those grounds were relied upon by the district court. See Magluta v. Samples, 162 F.3d 662, 664 (11th Cir. 1998) (citing Helvering v. Gowran, 302 U.S. 238, 245, 58 S. Ct. 154 (1937); Rowe v. Schreiber, 139 F.3d 1381, 1382 n. 2 (11th Cir. 1998).

ARGUMENT I

[Appellant's Issues I.C restated]

Appellant can not raise his First Amendment retaliation claim or Eighth Amendment claim regarding the use of force for the first time on appeal.

Appellate courts will generally decline to consider an issue raised for the first time on appeal. Troxler v. Owens–Illinois, Inc., 717 F.2d 530, 533 (11th Cir.1983). In Dean Witter Reynolds, Inc. v. Fernandez, 741 F.2d 355 (11th Cir.1984), this Court identified five exceptions to the general rule that an appellate court will refuse to consider an issue not presented to the trial court and raised for the first time on appeal.

Appellant specifically deliniated the claims he intended to bring his Complaint under the section titled Statement of Claims. (Doc. 1 at 9-10) Those claims were limited to 1) an Eighth Amendment claim regarding the conditions of his confinement ("failure to intervene while in a position to do so in seeking to evaluate the inhumane living conditions to accommodate with santitation procedure") and 2) a 14th Amendment claim for the same. Id. Appellant specifically laid out which claims he was pursuing such that pro se liberality should not apply to create *additional* claims that were not ever raised before.

To the extent that Appellant now seeks to raise, for the first time on appeal, a First Amendment retaliation claim and an Eighth Amendment excessive use of force claim,[3] this Court has stated that despite the liberal construing of a pro se pleading, "[n]evertheless, we cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action." Bilal v. Geo Care, LLC, 981 F.3d 903, 911 (11th Circ. 2020).

Exceptions to issues raised first on appeal

First, an appellate court may consider a pure question of law if the refusal to consider it would result in a miscarriage of justice. See also Matter of Novack, 639 F.2d 1274,1277 (5th Circ. 1981). Here,

[3] Further, even based on Appellant's allegations, had he articulated an Eighth Amendment excessive force claim in his Statement of Claims it would have been subject to dismissal for failure to state a claim. Thompson v. Smith, 505 Fed.Appx. 893, 903-904 (11th Circ. 2020). In pertinent part, this Court has discussed that pepper spray may constitute an Eighth Amendment violation when it is *unlawfully* sprayed. Id. at 903. However, in Appellant's particular case, there was no evidence presented to indicate that the Appellees unlawfully deployed the chemical agent. As stated in Appellant's complaint, the immediately preceding event to the spraying was Appellant's going "into a psychotic episode." (Doc. 1 at 7) Being given no other context under which to view the Appellees' intent by the alleged spraying of the Appellant, in addition to the fact that no mention of injury whatsoever was alleged resulting from the chemical agents, the District Court properly determined in toto that such was insufficient to proceed. (Doc. 40 at 9-10)

the Appellant never mentions any act by prison officials in his Complaint as being retaliatory, nor implicates that any sort of First Amendment violation ever occurred. Further, Appellant raises factual allegations as to the use of chemical agents *only* in the context of factual background for his allegations that Appellees failed to adequately respond to his complaints regarding the conditions of his confinement. As first claimed in Appellant's Initial Brief, he states the Appellees responded to his sanitary objections by "pepper-spraying him." AB at 29. However, in Appellant's initial complaint, Appellant states immediately prior to referencing the use of chemical agents that he "went into a psychotic episode." Doc. 1 at 6. The initial brief seems to purposefully omit this information, though, attempting to show such use of force against a person of "oridinary firmness," as opposed to an individual in the midst of a psychotic episode. AB at 28-29.

Second, an appellate court may consider an objection not raised in the court below when the appellant had no opportunity to raise the objection. In the present case, Appellant could have raised a First Amendment retaliation claim or Eighth Amendment

excessive force claim in his initial complaint, or at the very least, clarified his intention to raise such a claim in his Response to Appellees' Motion to Dismiss. Appellant did not do so in either case.

Third, an appellate court may consider an objection not raised below when there is at stake "a substantial interest of justice." A substantial interest of justice is equated with the "vindication of fundamental constitutional rights…" In re Daikin Miami Overseas, Inc. 868 F.2d 1201, 1206 (11th Circ 1989), citing U.S. v. Fernon, 640 F.2d 609, 612 n. 8 (5th Cir.1981) (appellants' right to a fair trial at stake); Edwards v. Sears, Roebuck & Co., 512 F.2d 276, 286 (5th Cir.1975) (with regard to the appellants' right to a fair trial, the court stated, "[A] healthy regard for the necessity and desirability of having errors corrected at trial rather than on appeal leads us to [consider arguments not raised below] only in *exceptional* cases where the interest of substantial justice is at stake." (Emphasis added)). Again, there is no substantial interest of justice issue here, exceptional or otherwise, as Appellant claimed in his initial brief a wholly inaccurate portrayal

of what he himself raised in his Complaint. AB at 29-30; Doc. 1 at 6-7.

Fourth, an appellate court may hear an issue not raised in the lower court when the proper resolution is beyond any doubt. Where, as here, an issue raised for the first time on appeal requires an appellate tribunal to resolve factual questions, the proper resolution of such issue cannot be said to be beyond any doubt.

Fifth, and finally, an appellate court may hear an issue for the first time if the issue presents significant questions of general impact or great public concern. There were never sufficient pleadings to suggest such retaliation or unjustified and excessive use of force ever occurred, and Appellant's own allegations demonstrate the jusitified, and therefore not retaliatory, purpose for the use of chemical agents, so thus in the absence of such pleading there would naturally be no impact to speak of whatsoever.

Even construed liberally, Appellant's complaint made no mention of the allegation raised in Appellant's initial brief. If such a claim were ever at the forefront of the Appellant's mind, it would presumably have taken course the same way as the other arguments

he presents: with explicit detail (e.g. the alleged multicolored hues of mildew in the cell's sink). Based on the foregoing, Appellant's First Amendment claim for retaliation and Eighth Amendment claim for excessive use of force are improperly brought before this Court, do not meet any exception to that rule, and should be dismissed.

ARGUMENT II

[Appellant's Issues I and II restated]

The District Court did not err in law or fact in its determination that Appellant failed to state a claim for an Eighth Amendment violation as to the conditions of his confinement.

All federal circuits have recognized that the deprivation of basic sanitary conditions can constitute an Eighth Amendment violation. See Budd v. Motley, 711 F.3d 840, 843 (7th Cir. 2013) (per curiam) ("[A]llegations of unhygienic conditions, when combined with the jail's failure to provide detainees with a way to clean for themselves with running water or other supplies, state a claim for relief."); Parrish v. Johnson, 800 F.2d 600, 609 (6th Cir. 1986) ("[T]he Eighth Amendment protects prisoners from being ... denied the basic elements of hygiene.") (quotation omitted); Green v. McKaskle, 788 F.2d 1116, 1126 (5th Cir. 1986) ("[A] state must furnish its prisoners

with reasonably adequate ... sanitation ... to satisfy [the Eighth Amendment's] requirements.") (quotation and alteration omitted); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) (noting that the failure to provide "minimally sanitary" conditions "amounts to a violation of the Eighth Amendment"); Hawkins v. Hall, 644 F.2d 914, 918 (1st Cir. 1981) (explaining that prison conditions "must be sanitary") (quotation omitted); Hite v. Leeke, 564 F.2d 670, 672 (4th Cir. 1977) (recognizing that "the denial of decent and basically sanitary living conditions and the deprivation of basic elements of hygiene" can violate the Eighth Amendment) (quotation omitted).

Here, the District Court properly found that Appellant failed to state a claim. In the grievances attached to Appellant's complaint, the prison responds that he regularly receives or is given access to cleaning supplies and that he is "enourage[ed]..to utilize the caustics given to clean and sanitize [his] assigned cell." Doc. 1 at 14.

The Appellant never alleged or raised the issue at all that the prison failed to provide cleaning him supplies. If the Appellant chose

not to utilize the supplies afforded to him, that is not the fault of the Appellees.

For the aforementioned reasons he failed to make a claim for a constitutional violation. By omitting mention of such a material fact on which his entire claim relies, the Appellant undermined his stance and facially provided a meritless and inadequately supported civil rights action. Accordingly, the District Court's dismissal of Appellant's complaint for failure to state a claim under an Eighth Amendment violation was clear and proper.

ARGUMENT III

[Appellant's Issues II.C restated]

Appellant's issue regarding the question of damages is not properly before this Court as it is premature.

The lower tribunal properly determined that Appellant failed to state a claim on which relief could be granted for the various reasons addressed above. Accordingly, any question regarding damages is premature. For Appellant's issue to come to a point where it was before the Court, it would require this Court to remand the action back to the lower tribunal despite Appellant's failure to state a claim, for the case below to continue and survive summary judgment, for

Appellant to complete and succeed at trial and to be awarded damages. Appellees' position is that none of the above should occur, as this Court should uphold the District Court's determination that Appellant failed to state a claim. Accordingly, the question of damages is not properly before this Court at this time.

ARGUMENT IV

[Appellant's Issues III restated]

The District Court did not abuse its discretion in dismissing Appellant's Complaint with prejudice.

Pursuant to Fed. R. Civ. P. 41(a)(2), the district court dismissed Appellant's Complaint with prejudice. (Doc. 41). "Dismissal on motion of the plaintiff pursuant to Rule 41(a)(2) is within the sound discretion of the district court, and its order may be reviewed only for an abuse of discretion. McCants v. Ford Motor Co., 781 F.2d 855, 857 (11th Cir. 1986) A dismissal for failure to state a claim under Rule 12(b)(6) is presumed to be a judgment on the merits unless otherwise specified. See Federated Dep't Stores, Inc. v. Moitie 452 U.S. 394, 399 n.3 (1981) ("The dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is a judgment on the merits." (citation and internal quotation marks omitted)). When a trial court

dismisses a complaint with prejudice, it's determined that "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." Jarrell v. United States Postal Serv., 753 F.2d 1088, 1091 (D.C. Cir. 1985). The district court did not abuse its discretion in dismissing Appellant's complaint with prejudice. Appellant attempts to ostensibly raise the argument that, as a *pro* se litigant, he should have been allowed to amend his complaint in lieu of dismissal. AB at 61-64. Fed. R. Civ. P. 15(a)(1)(b) allows a party to amend their pleading once as a matter of course, even without it being tied specifically to a litigant's *pro se* status. Appellant's contention that perhaps a "more carefully drafted complaint might state a claim runs exactly contrary to the case he cites as supporting that assertion. AB at 60. In Appellant's recitation of Woldeab v. Dekalb Cnty. Bd. of Ed., 885 F.3d 1289 (11th Circ. 2018), the facts in that particular case are fundamentally different than those in the present. In Woldeab the appellate court stated that the lower court in this case should have given leave to amend, due to the plaintiff committing only a curable *procedural error* in naming the incorrect party in his complaint. Id. at 1290. (Emphasis added). The

Court noted that the plaintiff demonstrated "confusion" as a pro se plaintiff "unschooled in the intricacies" of his particular pleading requirements. Id. Here, the court ruled on the *substantive* merits that Appellant plead. Doc. 1, 1-3. Further, the Appellant had two full opportunities to state a claim: in his initial complaint, or by providing clarification in his subsequent response in opposition. (Docs. 1 and 36). Moreover, Appellant never inquired or motioned the Court that he even *wanted* to amend his initial complaint, despite having ample time and opportunity to do so. From November 11, 2020, when Appellant filed his initial complaint, to October 13, 2021, when final judgment was entered, Appellant made no attempt to supplement or amend his pleading in those eleven months. (Docs. 1 and 41). If we are to construe this liberally in Appellant's favor as a *pro se* litigant, he filed seven distinct motions in that same time period, which in effect blemishes the "unsophisticated litigant" assumption under which *pro se* parties are given latitude. Given these facts, with specific reference to the substantive facts of the pleading failing to state a claim, there was no way for the Appellant to cure the complete deficiencies of the pleading. Unless we are to

assume he could supplant a different fact pattern entirely, dismissal with prejudice was appropriate in this case.

There is worth noting one final aspect as to the *extent* Appellant's claims are to be liberally construed in his favor. It is well-settled that the Court must read a *pro se* Complaint liberally. See Hughes v. Rowe, 449 U.S. 5, 9–10, (1980) (citing Haines v. Kerner, 404 U.S. 519, 520–21 (1972)). Moreover, *pro se* litigants are afforded a wide degree of latitude with regard to their submissions, as the Court construes their papers "'to raise the strongest arguments that they suggest.'" Soto v. Walker, 44 F.3d 169, 173 (2d Cir.1995)

To this end, the Appellant was *already given* significant leeway in the liberal interpretation of his filings. Further, Appellant has extensive federal court experience, having cited two federal district court actions in 2016 and 2017, respectively, in his Complaint, *both* of which were for Eighth Amendment claims. Doc. 1 at 16. To this end, Appellant has an *additional* prior lawsuit he failed to disclose relating to his imprisonment, case # 5:2019cv00256, filed on August 5, 2019, in the Northern District Court, Panama City Division. This

case was dismissed against him for failing to follow multiple court orders. In total, this represents three distinct federal district court complaints and adjudications under the Appellant's belt. Even given the wide latitude Appellant was given as a *pro se* litigant, Appellant's argument in this brief is essentially asking for the district court to have *forced* Appellant to amend his brief. This would be far averse of "liberally construing" a *pro se* pleading, and would be materially prejudicial to the Appellees' right to fair due process. For the foregoing reasons, the district court did not abuse its discretion in dismissing Appellant's complaint with prejudice.

CONCLUSION

WHEREFORE, Appellees respectfully request that the ruling of the District Court to grant dismissal in favor of Appellees be affirmed by this Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

This brief complies with the type-volume limitation of Fed. R. App. P. 32 (a)(7)(B) because this brief contains less than 13,600 words.

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in the body of this brief is 14-point Bookman Old Style.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court for the Eleventh Circuit Court of Appeals on May 9, 2022.

/s/ Ravi N. Sharma
Ravi N. Sharma, Esq