

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

SAMMY DAVIS JR.,

Plaintiff,

v.

**KENNETH MAPP, FELECIA BLYDEN,
ESTER SWEENEY,**

Defendants.

1:17-cv-00058

**TO: Sammy Davis Jr., *Pro Se*
P.O. Box 2796
75 Estate Whim
Frederiksted, VI 00840**

AMENDED REPORT AND RECOMMENDATION

THIS MATTER is before the Court *sua sponte* for an amended report and recommendation. This report and recommendation is issued without necessity of response.

I. BACKGROUND

Plaintiff in his Complaint alleges that the Government of the Virgin Islands and the Department of Human Services have stolen or otherwise misappropriated money that belongs to him, in violation of 42 U.S.C. § 1983. He seeks monetary relief in the amount of \$8,889.28 (the amount Davis alleges has been illegally seized) and \$20 million for “violation of [his] human rights.” (ECF No. 1 at 2).

Plaintiff filed an Amended Complaint on August 23, 2018 (ECF No. 23) alleging the same but has since not taken any action to prosecute his claims.

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II. APPLICABLE LEGAL PRINCIPLES

A. Mootness

Subject matter jurisdiction refers to the Court's power to hear a case. *Cty. of Morris v. Nationalist Movement*, 273 F.3d 527, 533 (3d Cir. 2001). Pursuant to Fed. R. Civ. P. 12(h)(3), "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

Article III of the Constitution provides that federal judicial power extends to cases and controversies. *See* U.S. Const. art III, § 2, cl.1. The mootness doctrine precludes federal courts from issuing advisory opinions by requiring that an actual controversy exists between adverse litigants. *See, e.g., Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996) ("If developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot.").

A justiciable case or controversy requires that a party have a continuing, personal interest in the outcome of the litigation. *See, e.g., Freedom from Religion Found. Inc v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016) ("[M]ootness ensures that this [requisite personal] interest 'continues throughout' the duration of the case." (citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997))). In addition, when events subsequent to the filing of a case mean that the decision of the federal court will not have any effect in the matter before it, the case must be dismissed as moot. *See Church of Scientology*

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of *Cal. v. United States*, 506 U.S. 9, 11 (1992) (“[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant ‘any effectual relief whatsoever’ to a prevailing party, the appeal must be dismissed.” (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895))).

Because a suit must be justiciable throughout its pendency, a mootness challenge to subject matter jurisdiction may arise at any time. See *Brown v. Phila. Hous. Auth.*, 350 F.3d 338, 346-47 (3d Cir. 2003); *Williams v. Sec’y Penn. Dep’t of Corr.*, 447 F. App’x 399, 402 (3d Cir. 2011). A case is moot if “(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Phillips v. Penn. Higher Educ. Assistance Agency*, 657 F.2d 554, 569 (3d Cir. 1981), *cert. denied* 455 U.S. 924 (1982) (citations omitted).

B. Failure To Prosecute

Generally, before a court may dismiss a case for failure to prosecute, it must first consider the factors set forth in *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868-69 (3d Cir. 1984). Those factors are: (1) the extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of the claim or defense. See *id.* No one factor is dispositive in the balancing

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analysis. *DDRA Capital, Inc. v. KPMG, LLP*, 2018 WL 813430, at *2 (D.V.I. Feb. 9, 2018) (citing *Briscoe v. Klaus*, 538 F.3d 252, 263 (3d Cir. 2008)). District courts are required “to consider these factors because dismissal with prejudice is, undeniably, a drastic sanction.” *In re Asbestos Prods. Liab. Litig. (No. VI)*, 718 F.3d 236, 246 (3d Cir. 2013). Ultimately, it is within the district court’s discretion to invoke dismissal pursuant to Rule 41(b). *Thomas v. Bonnano*, 2014 WL 642446, at *1 (D.V.I. Feb. 19, 2014).

III. DISCUSSION

The undersigned takes judicial notice of a published online article that largely moots Plaintiff’s claims. On September 20, 2019, The Virgin Islands Consortium published an article titled “Sammy Davis, A Former Foster Child, Is Set To Receive His \$8,889 Held By Human Services For Over 4 Years.”¹ It appears from this article that Plaintiff was in the process of receiving the funds which are the subject of this action. As such, the undersigned finds that Plaintiff’s claim for \$8,889 is likely moot.

As to any interest owed on those funds—or the \$20 million—the undersigned recommends dismissal for failure to prosecute. The undersigned requested a status report from Plaintiff on January 2, 2019 (ECF No. 25) and ordered him to show cause on December 16, 2019 (ECF No. 28). Plaintiff has not responded, and, given the public notice of the developments in his case, the undersigned recommends that the claims that have not been mooted be dismissed for failure to prosecute.

¹ This article can be found at the following link - <https://viconsortium.com/VIC/?p=78766>.

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IV. CONCLUSION

WHEREFORE, it is now hereby **RECOMMENDED** that Plaintiff's Amended Complaint (ECF No. 23) be dismissed as moot. Any claims that are not moot should be dismissed for lack of prosecution.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3

ENTER:

Dated: June 25, 2020

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
MAGISTRATE JUDGE