

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 13th day of September, two thousand four.

PRESENT:

HON. THOMAS J. MESKILL,
HON. ROGER J. MINER,
HON. ROBERT A. KATZMANN,
Circuit Judges,

----- X

JOHN JAY HUMPHREY,

Plaintiff-Appellant,

-v.-

No. 04-1247-cv

STATE OF NEW YORK,

Defendant-Appellee.

----- X

APPEARING FOR APPELLANT: John Jay Humphrey, *pro se*, New York, NY

Appeal from the United States District Court for the Northern District of New York (Munson, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is **AFFIRMED**.

Plaintiff-appellant John Jay Humphrey, *pro se*, appeals the district court's dismissal of his complaint as barred by the Eleventh Amendment. The parties' familiarity with the facts is assumed. This Court reviews *de novo* a district court's dismissal of a complaint for failure to state a

claim upon which relief can be granted. *See Flores v. Southern Peru Copper Corp.*, 343 F.3d 140, 148 (2d Cir. 2003).

For the reasons stated in the district court's order, Humphrey's claims, made against the State of New York as the sole defendant, are barred by the Eleventh Amendment. *See Davis v. New York*, 316 F.3d 93, 101 (2d Cir. 2002). Furthermore, to the extent that Humphrey's complaint can be construed as alleging claims against named state judges and courts, or the "OCSD," it was still properly dismissed. All of those claims were fatally conclusory, even after amendment was permitted. *See Leeds v. Meltz*, 85 F.3d 51, 53 (2d Cir. 1996). Moreover, judges are entitled to judicial immunity from damages for actions committed in their judicial capacity, *see Fields v. Soloff*, 920 F.2d 1114, 1119 (2d Cir. 1990), and Eleventh Amendment immunity protects state agencies, including state courts, *Richards v. State of New York*, 597 F.Supp. 692, 693 (E.D.N.Y. 1984), *aff'd*, 767 F.2d 908 (2d Cir. 1985) (table).

_____ For the reasons set forth, we AFFIRM the order of the District Court.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____
