Rel: October 29, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200184

Ex parte Tom F. Young, Jr.; Ray D. Martin; Marlene Lindley; and Chris May

PETITION FOR WRIT OF MANDAMUS

(In re: Danny Foster

v.

Tom F. Young, Jr.; Ray D. Martin; Steven A. Perryman; Melanie H. Gardner; Marlene Lindley; and Chris May)

(Randolph Circuit Court, CV-19-29)

STEWART, Justice.

Tom F. Young, Jr., a former circuit judge for the Fifth Judicial Circuit; Ray D. Martin, a circuit judge for the Fifth Judicial Circuit; Chris May, the Randolph Circuit Clerk; and Marlene Lindley, a former employee in May's office, petition this Court for a writ of mandamus directing the Randolph Circuit Court ("the trial court") to dismiss a complaint filed by Danny Foster, an inmate at the Ventress Correctional Facility, on the grounds that they are immune from suit, that Foster lacks standing to sue, and that Foster's claims are precluded by the applicable statute of limitations. For the reasons stated below, we grant the petition in part and deny it in part.

I. Facts and Procedural History

Foster filed a complaint in the trial court on May 6, 2019, naming as defendants the following: Judge Young; Judge Martin; May; Lindley; Steven Perryman, a circuit judge for the Fifth Judicial Circuit; and Melanie H. Gardner, a court reporter.[1] The complaint, which Foster filed

[1]After all the eligible judges for the Fifth Judicial Circuit, which includes Randolph County, recused themselves from the case, this Court

without the assistance of counsel, is inartfully pleaded. As best as this Court can tell, Foster alleged that, in violation of 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986, the aforementioned judicial officials and employees conspired to violate his civil rights in relation to criminal proceedings in which he had been adjudicated guilty. In the complaint, Foster alleged that, during a hearing in a criminal case, Judge Young used disparaging language toward him and instructed Gardner, the court reporter, not to transcribe those statements. Foster further alleged that Judge Young, Judge Martin, and Judge Perryman had conspired to deny his requests to modify the sentences in his criminal cases. He also alleged that those judges had conspired with Gardner to fabricate the trial transcripts in his criminal cases. He further contended that May and Lindley had failed to provide him with copies of documents from his criminal cases that he had requested from the Randolph Circuit Clerk's Office ("the clerk's office"), although his complaint does not identify the dates on which he made those requests.

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assigned the case to Judge John H. Graham of the 38th Judicial Circuit.

As relief, Foster sought an injunction against the judicial officials and employees directing them to refrain from violating his civil rights. He also sought an order compelling Judge Young, Judge Martin, and Judge Perryman to modify the sentences in his criminal cases to run concurrently and an order directing the judges to explain the reasons for their refusal to order his sentences to run concurrently. In addition, Foster sought an order compelling May and Lindley to produce records from his criminal cases, including the presentence-investigation reports, arrest warrants, and other documents that he had requested, and he contended that he had offered to prepay the costs associated with the production of the requested documents. Foster specifically stated in his complaint that he was seeking only equitable relief and that he did not seek an award of damages. According to the case-action summary, the trial court entered an order dismissing, with prejudice, the claims asserted against Judge Perryman and Gardner, although the reasons for the dismissal of those claims is not provided in the materials submitted to this Court.

Judge Young, Judge Martin, May, and Lindley (hereinafter referred to collectively as "the defendants") filed a motion to dismiss under Rule

12(b)(6), Ala. R. Civ. P., in which they asserted that Foster's claims against them were barred by the doctrines of judicial immunity, State or sovereign immunity, and State-agent immunity; that Foster lacked standing to sue them; and that Foster's claims were barred by the applicable statute of limitations. Foster filed a response to the motion. Although matters outside the pleadings had not been submitted in support of or in opposition to the motion to dismiss, the trial court, ex mero motu, entered an order converting the defendants' motion to dismiss to a motion for a summary judgment under Rule 56, Ala. R. Civ. P. The trial court's order allowed the defendants 30 days to file evidentiary support for their motion and, thereafter, allowed Foster 30 days to file additional evidentiary support in opposition to the defendants' motion.

The defendants did not file any evidentiary materials in support of their motion within the time allotted by the trial court. Foster, however, filed an additional response, to which he attached his own affidavit attesting to the events occurring at a hearing before Judge Young on April 18, 2020, in one of his criminal cases. He also attached an order entered by Judge Young on April 18, 2014, entering a plea of not guilty, ex mero

motu, for Foster in case no. CC-14-123, in the Randolph Circuit Court (see note 1, supra), citing Foster's failure to cooperate during a hearing; letters that he had sent to Judge Perryman and Judge Martin, in which he requested the entry of orders in his criminal cases directing his sentences to run concurrently; and an order entered by Judge Martin on November 5, 2018, in case no. CC-96-48.60, in the Randolph Circuit Court (see note 1, supra), denying Foster's motion for a nunc pro tunc order, which, presumably, was related to Foster's request for the entry of orders directing that his criminal sentences run concurrently. Foster further attached copies of several records requests he purportedly sent to the clerk's office requesting specific documents from case nos. CC-96-48.60 and CC-14-123. Foster's records requests included an offer to prepay the cost for production of the records.

The trial court entered an order denying the defendants' motion for a summary judgment, stating that, because the defendants did not file any evidentiary materials in support of their motion, the only evidence before the trial court was the evidentiary material submitted by Foster in opposition to the defendants' motion. The trial court, therefore, concluded

that the defendants had not met their evidentiary burden in support of their summary-judgment motion.

The defendants filed a petition to this Court seeking a writ of mandamus compelling the trial court to dismiss Foster's complaint on the basis that they are entitled to immunity from Foster's claims, that Foster lacks standing to sue the defendants, and that Foster's claims are subject to dismissal under the applicable statute of limitations.

II. Standard of Review

> " 'Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.'
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> "Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. See Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000)."

Ex parte Marshall, 323 So. 3d 1188, 1194-95 (Ala. 2020). Although " 'the general rule [is] that interlocutory denials of motions to dismiss and motions for a summary judgment cannot be reviewed by way of a petition

for a writ of mandamus,' " this Court has acknowledged " 'limited exceptions' " to that general rule for motions asserting " 'certain defenses (e.g., immunity, subject-matter jurisdiction, in personam jurisdiction, venue and some statute-of-limitations defenses)' " because those defenses, if applicable, " 'are of such a nature that a party simply ought not to be put to the expense and effort of litigation.' " Ex parte Hodge, 153 So. 3d 734, 748 (Ala. 2014)(quoting Ex parte Alamo Title Co., 128 So. 3d 700, 716 (Ala. 2013)(Murdock, J., concurring specially)).

The trial court converted the defendants' motion to dismiss to a motion for a summary judgment. This Court is not aware of any authority allowing a trial court to convert a motion to dismiss to a motion for a summary judgment, ex mero motu, absent the submission of materials outside the pleadings. In so converting their motion, the defendants contend, the trial court exceeded its discretion. The defendants, however, did not object to the trial court's order converting their motion to dismiss to a motion for a summary judgment. This Court has stated that, "on mandamus review, 'we look only to the factors actually argued before the trial court.' " Ex parte Staats-Sidwell, 16 So. 3d 789, 792 (Ala.

2008)(quoting Ex parte Antonucci, 917 So. 2d 825, 830 (Ala. 2005), citing in turn Ex parte Ebbers, 871 So. 2d 776, 792 (Ala. 2003)). The defendants also fail to adequately expound upon their contention that the trial court erroneously converted their motion to dismiss, and they fail to cite any authority in support of their contention. See Rule 21(a)(1)(E), Ala. R. App. P. (requiring "[a] statement of the reasons why the writ should issue, with citations to the authorities and the statutes relied on"). See also Rule 28(a)(10), Ala. R. App. P. (requiring arguments in appellate briefs to contain "citations to the cases, statutes, other authorities, and parts of the record relied on"). This Court has stated that, "[i]f anything, the extraordinary nature of a writ of mandamus makes the Rule 21 requirement of citation to authority even more compelling than the Rule 28 requirement of citation to authority in a brief on appeal." Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001). The defendants, thus, have waived any argument concerning the purported impropriety of the trial court's order converting their motion to dismiss to a motion for a summary judgment. Accordingly, we will analyze this case applying the summary-judgment standard of review.

As to this Court's review of a denial of a motion for a summary judgment, this Court has stated:

> " '[W]hether review of the denial of a summary-judgment motion is by a petition for a writ of mandamus or by permissive appeal, the appellate court's standard of review remains the same. If there is a genuine issue as to any material fact on the question whether the movant is entitled to [the pertinent defense], then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P. In determining whether there is a [genuine issue of] material fact on the question whether the movant is entitled to [the pertinent defense], courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000).'

"Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002).

> " ' "When the movant makes a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmovant to present substantial evidence creating such an issue. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). Evidence is 'substantial' if it is of 'such weight and quality that fair-minded persons in the exercise of impartial judgment can

> reasonably infer the existence of the fact sought to be proved.' Wright [v. Wright], 654 So. 2d [542,] 543 [(Ala. 1995)] (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989))." '
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> "Wilson v. Manning, 880 So. 2d 1101, 1102 (Ala. 2003) (quoting Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997))."

Ex parte City of Montgomery, 272 So. 3d 155, 159 (Ala. 2018). Moreover, "we review de novo questions of law arising in the context of a summary judgment." Van Hoof v. Van Hoof, 997 So. 2d 278, 286 (Ala. 2007).

III. Discussion

A.

The defendants contend that the doctrine of judicial immunity bars Foster's claims against them because the actions on which Foster bases his claims were taken by the defendants while acting in a judicial capacity. The defendants also contend that they are immune from suit under the State or sovereign immunity provided in Art. I, § 14, Ala. Const. 1901 (Off. Recomp.). The denial of a motion for a summary judgment predicated on the defense of immunity is reviewable by way of a petition

for a writ of mandamus. See Ex parte Hodge, supra; Ex parte City of Greensboro, 948 So. 2d 540 (Ala. 2006)(addressing the denial of a summary-judgment motion predicated on the defense of judicial immunity). This Court has stated that the availability of immunity "is ultimately a question of law to be determined by the court." Suttles v. Roy, 75 So. 3d 90, 100 (Ala. 2010).

The doctrine of judicial immunity shields judicial officers from liability for actions taken while acting in their judicial capacity, and it extends even to actions taken by judicial officers that are done in error, maliciously, or in excess of their authority. See Stump v. Sparkman, 435 U.S. 349, 356 (1978); Ex parte City of Greensboro, 948 So. 2d at 542; and Almon v. Gibbs, 545 So. 2d 18, 20 (Ala. 1989). As this Court has stated, "[a] judge acting in his or her judicial capacity must enjoy freedom from risk of a lawsuit, lest the administration of justice be inhibited by fear of personal liability." City of Bayou La Batre v. Robinson, 785 So. 2d 1128, 1133 (Ala. 2000)(citing Dennis v. Sparks, 449 U.S. 24, 31 (1980)). Judicial officers, however, do not enjoy the benefit of judicial immunity when they are performing administrative or ministerial duties that do not involve the

exercise of discretion. City of Bayou La Batre, 785 So. 2d at 1132 (citing Mireles v. Waco, 502 U.S. 9, 11 (1991), citing in turn Forrester v. White, 484 U.S. 219 (1988)).

Moreover, judicial immunity precludes an action for injunctive relief under 42 U.S.C. § 1983 against a judicial officer acting within his or her judicial capacity unless a declaratory judgment has been violated or declaratory relief is unavailable. Justice Mendheim, writing for a majority of the Justices of this Court, recently summarized this concept in a special concurrence in Ex parte Marshall, supra:

> "Congress, in the Federal Courts Improvement Act of 1996, amended 42 U.S.C. § 1983 such that 'injunctive relief against a judicial officer for an act or omission in his judicial capacity shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.' Bauer v. Texas, 341 F.3d 352, 357 (5th Cir. 2003). See also Pub. L. No. 104-317, § 309(c), 110 Stat. 3847 (codified at 42 U.S.C. § 1983); Kuhn v. Thompson, 304 F. Supp. 2d 1313, 1322-23 (M.D. Ala. 2004) (noting that, '[w]here a plaintiff does not allege and the record does not suggest that the judicial defendant violated a declaratory decree or that declaratory relief was unavailable, judicial immunity requires dismissal of claims against judicial officers for actions taken in their judicial capacity even when the claims seek prospective injunctive relief'); Ray v. Judicial Corr. Servs., Inc., No. 2:12-CV-02819-RDP, Oct. 9, 2014 (N.D. Ala. 2014) (not selected for publication in F. Supp.) (stating that '[i]t cannot be seriously disputed that, after the [Federal

> Courts Improvement Act], judicial immunity typically bars claims for prospective injunctive relief against judicial officials acting in their judicial capacity. Only when a declaratory decree is violated or declaratory relief is unavailable would plaintiffs have an end-run around judicial immunity'). Thus, even under the authority relied upon by the respondents, their claim for injunctive relief against the petitioner circuit judges is barred by judicial immunity."

323 So. 3d at 1202-03 (Mendheim, J., concurring specially, joined by four Justices).

Here, the claims against Judge Young and Judge Martin stem from actions that those judges took in their official judicial capacities while presiding over proceedings in Foster's criminal cases and while they were performing judicial functions, i.e., presiding over hearings or entering orders denying motions to modify sentences of incarceration. Foster does not contend otherwise. Further, Foster does not allege that a declaratory judgment was violated or that declaratory relief is unavailable, and, thus, his request for injunctive relief under 42 U.S.C. § 1983 is barred by judicial immunity. Accordingly, Judge Young and Judge Martin are immune from all Foster's claims and are entitled to a summary judgment

on that basis.[2] See Almon v. Battles, 541 So. 2d 519, 521 (Ala. 1989)(concluding that judicial immunity barred claims asserted under 42 U.S.C. §§ 1983, 1985, and 1986 against a judge for actions taken in his official capacity).

May and Lindley contend that they are entitled to judicial immunity because, they assert, they, like judges, are judicial officers who perform judicial functions. May and Lindley correctly note that judicial immunity extends to the discretionary judicial acts of clerks of court and magistrates. City of Bayou La Batre, 785 So. 2d at 1133. As this Court has stated, "where a clerk of court is performing a duty that requires the exercise of judgment and discretion in its performance, it is considered a judicial act entitling the clerk to judicial immunity." Gibbs, 545 So. 2d at

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[2]Notwithstanding our conclusion that the claims against Judge Young and Judge Martin are barred by judicial immunity, we also note that "[t]he general rule is that a court may not interfere with the enforcement of criminal laws through a civil action ...." Tyson v. Macon Cnty. Greyhound Park, Inc., 43 So. 3d 587, 589 (Ala. 2010). Insofar as Foster seeks an order compelling Judge Young and Judge Martin to modify the sentencing orders in his criminal cases, Foster's complaint is an impermissible attempt to modify the rulings in his criminal case via a civil action.

20. See also § 12-17-5, Ala. Code 1975 (providing that circuit clerks have judicial immunity from any liability arising from the execution of their duties, which are statutorily prescribed in § 12-17-94(a), Ala. Code 1975). As noted above, however, when a clerk or magistrate performs a ministerial or administrative duty, judicial immunity has no application. City of Bayou La Batre, 785 So. 2d at 1132 (concluding that a municipal magistrate's failure to properly fax a warrant-recall order did not involve the type of judgment contemplated that would invoke judicial immunity and, instead, involved the performance of an administrative function).

Foster's claim against May and Lindley is not a model of clarity. Adhering to the rules governing the liberal construction of pleadings, we construe Foster's claim to be one seeking a remedy under the Open Records Act, § 36-12-40 et seq., Ala. Code 1975. See Ex parte Perch, 17 So. 3d 649, 650 (Ala. 2009)(concluding that a state inmate's request for documents from his criminal case amounted to a request for public writings under the Open Records Act).[3] Thus, whether judicial immunity

[3]We note that, although Foster purports to lump his claims against May or Lindley within his civil-rights claims under 42 U.S.C. §§ 1983,

applies would depend on whether May's and Lindley's alleged actions or inactions in relation to Foster's records requests amounted to judicial functions or administrative functions.

In Graham v. Alabama State Employees Ass'n, 991 So. 2d 710 (Ala. Civ. App. 2007), the Court Civil Appeals considered, among other things, whether the denial of a request under the Open Records Act amounted to a discretionary act. In Graham, the Alabama State Employees Association ("the ASEA") made a request under the Open Records Act to the Alabama State Personnel Department ("the SPD") for the production of certain documents. After the SPD did not produce the documents, the ASEA filed a petition for a writ of mandamus in a circuit court seeking an order

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1985, and 1986, he does not specifically assert that May or Lindley have violated any federally protected right under the United States Constitution or a federal statute. The United States Supreme Court has stated that "Section 1983 provides a federal remedy for 'the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.' As the language of the statute plainly indicates, the remedy encompasses violations of federal statutory as well as constitutional rights." Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103, 105 (1989). As observed above, we have construed Foster's claim against May and Lindley as seeking relief only under the Open Records Act, which is a claim arising from alleged violations of state law.

compelling the SPD to produce the requested records. The circuit court issued a writ directing the SPD to produce most of the documents the ASEA had requested. On appeal, the Court of Civil Appeals stated:

> "'"'"Alabama law has defined 'discretionary acts' as '"[t]hose acts [as to which] there is no hard and fast rule as to course of conduct that one must or must not take" and those requiring "exercise in judgment and choice and [involving] what is just and proper under the circumstances."'"'"' Hollis v. City of Brighton, 950 So. 2d 300, 307 (Ala. 2006) (quoting Blackwood v. City of Hanceville, 936 So. 2d 495, 504 (Ala. 2006), quoting in turn Norris v. City of Montgomery, 821 So. 2d 149, 153 (Ala. 2001), quoting in turn Montgomery v. City of Montgomery, 732 So. 2d 305, 310 (Ala. Civ. App. 1999)). In contrast, '"'[o]fficial action, the result of performing a certain and specific duty arising from fixed and designated facts, is a ministerial act.'"' O'Barr v. Feist, 292 Ala. 440, 445, 296 So. 2d 152, 156 (1974) (quoting Perkins v. United States Fidelity & Guaranty Co., 433 F.2d 1303, 1305 [(5th Cir. 1970)], quoting in turn Rainey v. Ridgeway, 151 Ala. 532, 535, 43 So. 843, 844 (1907))."

Graham, 991 So. 2d at 718. The court concluded, in pertinent part, that, "[o]nce a citizen expresses a legitimate reason for seeking public SPD records that have not been deemed confidential, neither the SPD nor its director has discretion with regard to whether they will produce the document." Id. The court further held that, "[b]ecause the operative statutes unequivocally direct the SPD to produce nonconfidential public

documents, any production would be considered a ministerial act that a circuit court may properly compel by a writ of mandamus. Therefore, the trial court did not err in issuing the requested writ of mandamus in this case." Id.

Consistent with the Court of Civil Appeals' decision in Graham, we conclude that Foster's claim against May and Lindley seeks to compel the performance of an administrative duty. Although May and Lindley contend that Foster's allegations pertain to actions or inactions that they took in their official capacities, they have not made any assertion that they exercised any judgment or discretion in regard to processing Foster's requests for records. Judicial immunity, therefore, cannot serve as a bar to Foster's claim against May and Lindley for relief under the Open Records Act.

May and Lindley also contend that they are entitled to State or sovereign immunity under Art. I, § 14, Ala. Const. 1901 (Off. Recomp.), which provides that "the State of Alabama shall never be made a defendant in any court of law or equity." Immunity under § 14 extends to state officers sued in their official capacities; however, it is not unlimited.

See Ex parte Moulton, 116 So. 3d 1119, 1130-31 (Ala. 2013). Specifically, this Court has held that § 14 will not prohibit actions brought to compel State officials to perform their legal duties and actions to compel State officials to perform a ministerial act. See Ex parte Alabama Dep't of Fin., 991 So. 2d 1254, 1256-57 (Ala. 2008)(identifying the six general categories of actions that do not come within the prohibition of § 14). Foster's claim seeks an order compelling May and Lindley to perform the nondiscretionary, ministerial duty of providing him with the records he requested from his criminal cases. Section 14, therefore, does not prohibit the claim under the Open Records Act against May and Lindley.

B.

May and Lindley contend that Foster lacks standing to sue because, they contend, he fails to allege a particularized injury in his complaint. We first note that Foster is a private individual asserting a claim against May and Lindley, a public official and a public employee, respectively, under the Open Records Act. Because this is a public-law case, the concept of standing applies. See Poiroux v. Rich, 150 So. 3d 1027, 1039 (Ala. 2014)(determining that the case was brought by private individuals

against various state officials and involved the constitutionality of fees imposed pursuant to statute and concluding, therefore, that the case fell within the definition of a public-law case and that the concept of standing applied).

"The question of standing implicates the subject-matter jurisdiction of the court." Bernals, Inc. v. Kessler-Greystone, LLC, 70 So. 3d 315, 319 (Ala. 2011). "A challenge to a trial court's subject-matter jurisdiction based on the plaintiff's alleged lack of standing is reviewable by a petition for a writ of mandamus." Ex parte Merrill, 264 So. 3d 855, 862 (Ala. 2018)(citing Ex parte HealthSouth Corp., 974 So. 2d 288, 292 (Ala. 2007)); see also Ex parte Hodge, supra. A party has established standing when they can show " ' "(1) an actual, concrete and particularized 'injury in fact' -- 'an invasion of a legally protected interest'; (2) a 'causal connection between the injury and the conduct complained of'; and (3) a likelihood that the injury will be 'redressed by a favorable decision.' " ' " Gann v. City of Gulf Shores, 29 So. 3d 244, 248 (Ala. Crim. App. 2009) (quoting Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256-57 (Ala. 2004), quoting in turn Alabama Alcoholic Beverage Control Bd. v.

Henri-Duval Winery, LLC, 890 So. 2d 70, 74 (Ala. 2003), quoting in turn Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992))(emphasis omitted). Moreover,

> " ' " '[i]njury will not be presumed; it must be shown.' " Town of Cedar Bluff[v. Citizens Caring for Children], 904 So. 2d [1253,] 1256 [(Ala. 2004)](quoting Jones v. Black, 48 Ala. 540, 543 (1872)). "A party's injury must be 'tangible,' see Reid v. City of Birmingham, 274 Ala. 629, 639, 150 So. 2d 735, 744 (Ala. 1963); and a party must have 'a concrete stake in the outcome of the court's decision.' " Kid's Care, Inc. v. Alabama Dep't of Human Res., 843 So. 2d 164, 167 (Ala. 2002)(quoting Brown Mech. Contractors, Inc. v. Centennial Ins. Co., 431 So. 2d 932, 937 (Ala. 1983)). The plaintiffs "must allege 'specific concrete facts demonstrating that the challenged practices harm [them], and that [they] personally would benefit in a tangible way from the court's intervention.' " Ex parte HealthSouth [Corp.], 974 So. 2d [288,] 293 [(Ala. 2007)] (quoting Warth v. Seldin, 422 U.S. 490, 508, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975) (footnote omitted)). At a minimum, they must show that they personally have suffered some actual or threatened injury as a result of the purportedly illegal conduct. Stiff v. Alabama Alcoholic Beverage Control Bd., 878 So. 2d 1138, 1141 (Ala. 2003).' "

Ex parte LeFleur, [Ms. 1190191, Nov. 6, 2020] ____ So. 3d ____, ____(Ala. 2020) (quoting Ex parte Merrill, 264 So. 3d 855, 862-63 (Ala. 2018)).

As observed above, Foster's claim against May and Lindley is a request for relief under the Open Records Act. This Court has routinely

recognized that "[t]he Open Records Act is remedial and should therefore be liberally construed in favor of the public." Water Works & Sewer Bd. of Talladega v. Consolidated Publ'g, Inc., 892 So. 2d 859, 862 (Ala. 2004). The Open Records Act provides that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." § 36-12-40, Ala. Code 1975 (emphasis added). In Ex parte Perch, 17 So. 3d at 650, this Court reaffirmed the proposition that " '[n]o statute denies this right to inmates or felons.' " (Quoting Ex parte Gill, 841 So. 2d 1231, 1233 (Ala. 2002)).

Here, aside from citing general principles relating to the doctrine of standing, the petition for a writ of mandamus fails to articulate any cognizable argument applicable to the facts in support of the proposition that Foster has not alleged that he suffered a concrete injury under the Open Records Act. Although the defendants opted not to supply any evidentiary proof to substantiate their assertion that Foster did not have standing, Foster provided unrebutted evidence in opposition to the motion for a summary judgment indicating that he had made numerous records requests to the clerk's office and that his requests included an offer to

prepay the costs associated with responding to the requests. See Ex parte Gill, 841 So. 2d at 1234 (concluding that § 36-12-40, a part of the Open Records Act, "does not entitle inmates to any relief from their incarceration or to any transportation to the custodian's office to accomplish th[e] tasks [of identifying or copying the relevant records] and does not entitle them to free copies or to funds to pay for copies"). May and Lindley, therefore, have not demonstrated that they have a clear legal right to a summary judgment on the basis that Foster lacks standing to assert a claim under the Open Records Act.

C.

In the mandamus petition, May and Lindley argue that they were entitled to a summary judgment because Foster's claim against them is barred by the applicable statute of limitations. In support of their contention, May and Lindley merely contend, without offering any evidentiary support, that Foster's requests for records were fulfilled on December 17, 2014, when the clerk's office sent him the complete file in one of his criminal cases and that Foster, accordingly, had two years from

that date, i.e., December 17, 2016, to file suit under § 6-2-38(i), Ala. Code 1975.

This Court has stated:

> "[A]side from the limited exceptions recognized by this Court and those cases in which it is clear from the face of the complaint that a defendant is entitled to a dismissal or a judgment in its favor, the drastic and extraordinary remedy of a writ of mandamus is not available merely to alleviate the inconvenience and expense of litigation for a defendant whose motion to dismiss or motion for a summary judgment has been denied."

Ex parte Sanderson, 263 So. 3d 681, 688 (Ala. 2018). In Ex parte Hodge, supra, this Court authorized review by way of a mandamus petition when the defendants were "faced with the extraordinary circumstance of having to further litigate this matter after having demonstrated from the face of the plaintiff's complaint a clear legal right to have the action against them dismissed based on the four-year period of repose found in § 6-5-482(a)[, Ala. Code 1975]." 153 So. 3d at 749. This Court further stated in Hodge that

> "[t]his case is not to be read as a general extension of mandamus practice in the context of a statute-of-limitations defense; rather, it should be read simply as extending relief to the defendants in this case where they have demonstrated,

> from the face of the complaint, a clear legal right to relief and the absence of another adequate remedy."

Id. (emphasis added).

Here, May and Lindley make no argument that, based on the face of Foster's complaint, they have a clear legal right to a summary judgment on the ground that the applicable statute of limitations bars Foster's claim against them. Moreover, Foster's complaint is devoid of any information from which this Court can determine that his claim against May and Lindley is untimely. He does not provide the dates on which he submitted his records requests. May and Lindley, therefore, "have not demonstrated that this case falls within the exception recognized in Hodge to the general rule against review by mandamus of the applicability of a statute-of-limitations defense." Ex parte International Refin. & Mfg. Co., 153 So. 3d 774, 782 n.3 (Ala. 2014).

IV. Conclusion

We grant the defendants' petition insofar as it seeks a writ of mandamus directing the trial court to enter a summary judgment in favor of Judge Young and Judge Martin on the ground that all the claims

asserted against them by Foster are barred by the doctrine of judicial immunity. We deny the petition, however, insofar as it seeks a writ of mandamus instructing the trial court to enter a summary judgment in favor of May and Lindley regarding Foster's claim against them under the Open Records Act.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Parker, C.J., and Sellers, Mendheim, and Mitchell, JJ., concur.

Bolin, Shaw, Wise, and Bryan, JJ., concur in the result.