

SUPREME COURT OF THE UNITED STATES

WILLIAM LEE JUDY
Petitioner,

v.

Case Number:

KATHY WILLIAMS, et alia,
Respondents.

Appendix A, the Judgment of the United States
Court of Appeals for the Fourth Circuit

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6607

WILLIAM LEE JUDY,

Plaintiff - Appellant,

v.

KATHY WILLIAMS, Housing Unit Manager at FCC Petersburg in Petersburg, VA; IAN CONNER; SEVERAL NAMED BUT UNKNOWN SEARCH TEAM MEMBERS; NAMED BUT UNKNOWN REGIONAL ADMINISTRATIVE REMEDY COORDINATOR; NAMED BUT UNKNOWN INSTITUTIONAL ADMINISTRATIVE REMEDY COORDINATOR; UNITED STATES OF AMERICA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:16-cv-00345-AWA-LRL)

Submitted: October 23, 2018

Decided: October 26, 2018

Before NIEMEYER, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William Lee Judy, Appellant Pro Se. Sean Douglas Jansen, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Lee Judy appeals the district court's order denying relief on his complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). We have reviewed the record and find no reversible error. Accordingly, we grant leave to proceed in forma pauperis and affirm for the reasons stated by the district court. *Judy v. Williams*, No. 2:16-cv-00345-AWA-LRL (E.D. Va. Mar. 29, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6607
(2:16-cv-00345-AWA-LRL)

WILLIAM LEE JUDY

Plaintiff - Appellant

v.

KATHY WILLIAMS, Housing Unit Manager at FCC Petersburg in Petersburg, VA; IAN CONNER; SEVERAL NAMED BUT UNKNOWN SEARCH TEAM MEMBERS; NAMED BUT UNKNOWN REGIONAL ADMINISTRATIVE REMEDY COORDINATOR; NAMED BUT UNKNOWN INSTITUTIONAL ADMINISTRATIVE REMEDY COORDINATOR; UNITED STATES OF AMERICA

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

SUPREME COURT OF THE UNITED STATES

WILLIAM LEE JUDY,
Petitioner,

v.

Case Number:

KATHY WILLIAMS, et alia,
Respondents,

Appendix B, the Order of the District Court for the
Eastern District of Virginia Dismissing Claims Against
the United States of America

SUPREME COURT OF THE UNITED STATES
WILLIAM LEE JUDY,
Petitioner,

v.

Case Number:

KATHY WILLIAMS, et alia,
Respondents.

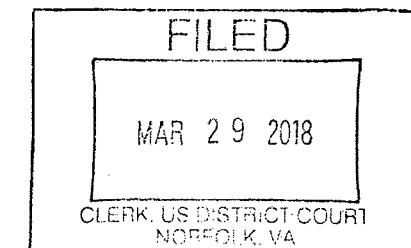
Appendix C, the Order of the District Court for the
Eastern District of Virginia Dismissing All of the
Individual Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

WILLIAM LEE JUDY,

Plaintiff,

v.



ACTION NO. 2:16cv345

KATHY WILLIAMS, *et al.*,

Defendants.

DISMISSAL ORDER

Plaintiff, a federal prisoner, brought this *pro se* action alleging various due process violations in connection with the loss of his alarm clock during a shakedown of his housing unit. Plaintiff claims that, on July 22, 2014, several Bureau of Prisons ("BOP") officers conducted a cell search of Plaintiff's housing unit. All inmates were required to leave the area. After the cell search was concluded, Plaintiff's alarm clock, worth \$7.80, was missing and all that was left was the battery cover and the battery, which Plaintiff found under his bed. Plaintiff has requested that his alarm clock be returned, but it has not been returned.

I. Procedural History

Plaintiff filed this action against Defendant Williams, Defendant Connors,¹ and a number of Unnamed Defendants. ECF No. 1. On July 1, 2016, Plaintiff filed an Amended Complaint. ECF No. 3. On August 17, 2016, Plaintiff filed a number of attachments to his Amended Complaint. ECF No. 6. In an Order dated September 6, 2016, the Court construed Plaintiff's Amended Complaint, including the additional attachments, as alleging causes of action pursuant to *Bivens* and

¹The docket currently reflects Defendants' last name as Connor. The Clerk is **DIRECTED** to correct Defendant's name to Ian Connors.

the Federal Tort Claims Act (“FTCA”), and added the United States as a Defendant. ECF No. 7. The United States filed a Motion to Dismiss for Lack of Jurisdiction. ECF No. 22. On April 11, 2017, Defendant Connor filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 46. On May 4, 2017, Plaintiff filed a Motion for Summary Judgment. ECF No. 53. On June 2, 2017, Plaintiff filed a Motion to Amend his Motion for Summary Judgment. ECF No. 61. On June 22, 2017, Defendant Williams filed a Motion to Dismiss. ECF No. 64. By Order entered September 20, 2017, the Court granted the Motion to Dismiss filed by the United States and ordered Plaintiff to provide the names and addresses for the as yet unnamed Defendants. ECF No. 75. On October 25, 2017, Plaintiff filed a Motion for Extension of Time to provide the names of the unnamed Defendants. ECF No. 79. By Order entered November 20, 2017, the Court granted Plaintiff’s Motion for an Extension of Time. ECF No. 81. On December 21, 2017, Plaintiff filed a second Motion for Extension of Time to name the as yet unnamed Defendants. ECF No. 83. Defendants have objected to Plaintiff’s request for additional time. ECF No. 84. Plaintiff filed a Response to Defendants’ Opposition. ECF No. 85.

II. Analysis

A. Standard on a Motion to Dismiss

“[T]he purpose of Rule 12(b)(6) is to test the legal sufficiency of the complaint.” *Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994). In construing a motion to dismiss, the facts, though not the legal conclusions, alleged in a plaintiff’s *pro se* complaint must be taken as true. *Loe v. Armistead*, 582 F.2d 1291, 1292 (4th Cir. 1978); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A *pro se* complaint should survive a motion to dismiss under Rule 12(b)(6) for failure to state a claim only when a plaintiff has set forth “enough facts to state a claim to relief that is plausible on its face.”

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “Factual allegations must be enough to raise a right to relief above the speculative level” and beyond the level that is merely conceivable. *Id.*; *Iqbal*, 556 U.S. at 680. A *pro se* complaint involving civil rights issues should be liberally construed. *Gordon v. Leekte*, 574 F.2d 1147, 1151 (4th Cir. 1978). However, a court is not required “to accept as true a legal conclusion couched as a factual allegation,” *Papasan v. Allain*, 478 U.S. 265, 286 (1986), or a legal conclusion unsupported by factual allegations. *Iqbal*, 556 U.S. at 681. Dismissal is appropriate when a complaint contains a description of underlying facts that fails to state a viable claim. *Estelle v. Gamble*, 429 U.S. 97, 106-09 (1976); *Twombly*, 550 U.S. at 558.

B. Qualified Immunity

“Qualified immunity protects officers who commit constitutional violations but who, in light of clearly established law, could reasonably believe that their actions were lawful.” *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, 810 F.3d 892, 898 (4th Cir. 2016) (quoting *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc)). This protection “balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Yates v. Terry*, 817 F.3d 877, 884 (4th Cir. 2016) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)).

To determine whether an officer is entitled to qualified immunity, courts engage in a two-step inquiry. “The first step is to determine whether the facts, taken in the light most favorable to the non-movant, establish that the officer violated a constitutional right. At the second step, courts determine whether that right was clearly established.” *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The Court is free to “address these two questions in the order . . . that will best facilitate

the fair and efficient disposition of each case.” *Raub v. Campbell*, 785 F.3d 876, 880-81 (4th Cir. 2015) (internal quotations omitted). If the Court concludes that no constitutional right was violated, there is no need to continue through the remainder of the inquiry into qualified immunity. *Saucier*, 533 U.S. at 201. The Supreme Court has held that “a ruling on the issue of qualified immunity should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive.” *Id.* at 200.

C. Defendant Connors’ Motion to Dismiss

Plaintiff’s Complaint against Defendant Connors is based on his dissatisfaction with the manner in which Defendant Connors responded to his grievances. However, prisoners do not have a constitutionally protected right to “grievance procedures or access to any grievance procedure voluntarily established by a state.” *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994). As Plaintiff has no right to access to the grievance procedure, the fact that Defendant Connors did not respond to Plaintiff’s grievances in a manner that Plaintiff considers appropriate is not a constitutional violation. Plaintiff’s Amended Complaint simply does not rise to the level of constitutional significance.

Plaintiff also seeks to hold Defendant Connors responsible for not returning Plaintiff’s alarm clock. Plaintiff claims it is Defendant Connors’ burden to show why he should not be held liable. However, it is Plaintiff’s burden to show that Defendant Connors is liable. Defendant Connors was not present when Plaintiff’s alarm clock was allegedly confiscated. Plaintiff does not allege that Defendant Connors possesses Plaintiff’s alarm clock or that he has any ability to return Plaintiff’s alarm clock to Plaintiff. As Defendant Connors’ actions were not unconstitutional, Defendant Connors is entitled to qualified immunity for Plaintiff’s claims against him.

D. Defendant Williams' Motion to Dismiss

Plaintiff seeks to hold Defendant Williams liable based on her mere presence in the housing unit at the time that Plaintiff's cell was searched. In addition, Defendant Williams denied some of Plaintiff's informal grievances about his missing alarm clock.

Plaintiff's claim against Defendant Williams regarding her responses to his grievances is deficient for the same reasons explained above. To reiterate, prisoners do not have a constitutionally protected right to "grievance procedures or access to any grievance procedure voluntarily established by a state." *Adams*, 40 F.3d at 75. Defendant Williams' mere presence in the housing unit at the time that Plaintiff's cell was searched does not establish that she was involved in any manner. Plaintiff has simply failed to assert any wrong-doing on the part of Defendant Williams. As Plaintiff has not alleged any unconstitutional actions on the part of Defendant Williams, Defendant Williams is entitled to qualified immunity.

E. Plaintiff's Claims Against Unnamed Defendants

Plaintiff's Amended Complaint fails to state a cognizable claim for damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).² Deprivations of personal property that are a result of random unauthorized acts of officials do not offend principles of due process if due process is satisfied by adequate post-deprivation remedies. *Parratt v. Taylor*, 451 U.S. 527, 543 (1981). Plaintiff has post-deprivation remedies in the form of filing a small claims action. Furthermore, failure of officials to take due care is not sufficient to rise to the level of a constitutional violation. *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986).

²The Court notes that Plaintiff also submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, in Civil Action No. 2:15cv337, asserting essentially the same claims.

Plaintiff also claims that the Unnamed Defendants failed to adhere to regulations regarding confiscation of property. Alleged violations of regulations do not state a violation of the United States Constitution. *Riccio v. Cty. of Fairfax*, 907 F. 2d 1459, 1468-69 (4th Cir. 1990). Plaintiff also asserts that the failure to comply with the regulations related to the confiscation of property breached Plaintiff's plea agreement. Plaintiff claims he entered into a plea agreement with the United States of America. However, Plaintiff agreed to dismiss the United States of America as a Defendant, and the United States was dismissed by Order entered September 20, 2017. ECF No. 75.

Plaintiff's primary assertion is that all laws, including common laws of the Commonwealth of Virginia, are incorporated into the plea agreement. Plaintiff's theory appears to be that any transgression that might allow him to bring a civil suit, including a small claims action, is a violation of his plea agreement, that entitles him to bring an action pursuant to *Bivens* for compensatory and punitive damages. However, Plaintiff has not explained how the named or Unnamed Defendants are in privity to Plaintiff's plea agreement.

For these reasons, the Court finds that it would be futile to continue to attempt to discern the identities of the as yet Unnamed Defendants. Therefore, Plaintiff's Motion for an Extension of Time to name the Unnamed Defendants, ECF No. 83, is **DENIED**. All claims against the Unnamed Defendants are **DISMISSED**.

III. Conclusion

For the foregoing reasons, Defendant Connors' Motion to Dismiss, ECF No. 46, is **GRANTED**, Defendant Williams' Motion to Dismiss, ECF No. 64, is **GRANTED**, Plaintiff's Motion to Amend the Motion for Summary Judgment, ECF No. 61, is **GRANTED**, Plaintiff's Motion for Summary Judgment, ECF No. 53, is **DENIED**, Plaintiff's Motion for an Extension of

Time, ECF No. 83, is **DENIED**, and all claims against Unnamed Defendants are **DISMISSED**. The Clerk is **DIRECTED** to enter judgment for all Defendants on all claims.

Plaintiff is advised that he may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty days from the date of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Plaintiff and counsel for Defendant.

IT IS SO ORDERED.



Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia

March 28, 2018

**Additional material
from this filing is
available in the
Clerk's Office.**