UNITED STATES SUPREME COURT

JERRY ANDERSON II
Petitioner
v
REX MILLER
MELODY WALLACE
RICHARD RUSSELL
defendant

On Petition for writ of certiorari to the 6th Circuit Court of Appeals

Joint Appendix

Jerry Anderson II
In Proper

9-27-18

Jerry Anderson II
2727 E Beecher St
Adrian, MI 49221
Gus Harrison Correctional

Appendix

list order

District Court opinion

U.S Court of Appeals opinion (6th Cir)

Rehearing En banc opinion

Denied photo copy disbursement

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY ANDERSON,

Plaintiff,

v.

REX MILLER et al.,

Defendants.
/

Case No. 1:17-cv-1048

Honorable Robert J. Jonker

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint against Defendants Miller, Wallace, and Russell for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at Earnest C. Brooks Correctional Facility, (LRF) in Muskegon Heights, Muskegon

County, Michigan. Plaintiff sues LRF Librarian Rex Miller, MDOC Litigation Coordinator Melody Wallace, and MDOC Manager of the Grievance Section of the Office of Legal Affairs Richard Russell.

Plaintiff alleges that Defendant Wallace sent a directive to MDOC librarians, instructing them to destroy all copies of state habeas corpus form MC 203. Wallace further ordered that copies not be made of the form, even for prisoners who had sufficient funds in their accounts to pay for the copies. Plaintiff contends that, in accordance with Wallace's order, Defendant Miller refused to make copies of his state habeas form, which he had completed on MC 203. Plaintiff grieved the denial of photocopies by Defendant Russell. According to Plaintiff, the three Defendants have hindered his right of access to the courts.

Plaintiff seeks injunctive relief, together with compensatory and punitive damages.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it

asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

It is well established that prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The principal issue in *Bounds* was whether the states must protect the right of access to the courts by providing law libraries or alternative sources of legal information for prisoners. *Id.* at 817. The Court noted that in addition to law libraries or alternative sources of legal knowledge, the states must provide indigent inmates with "paper and pen to draft legal documents, notarial services to authenticate them, and with stamps to mail them." *Id.* at 824-25. The right of access to the courts also prohibits prison officials from erecting barriers that may impede the inmate's access to the courts. *See Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992).

An indigent prisoner's constitutional right to legal resources and materials is not, however, without limit. In order to state a viable claim for interference with his access to the courts, a plaintiff must show "actual injury." *Lewis v. Casey*, 518 U.S. 343, 349 (1996); *see also Talley-Bey v. Knebl*, 168 F.3d 884, 886 (6th Cir. 1999); *Knop*, 977 F.2d at 1000. In other words, a plaintiff must plead and demonstrate that the shortcomings in the prison legal assistance program or lack of legal materials have hindered, or are presently hindering, his efforts to pursue a nonfrivolous legal claim. *Lewis*, 518 U.S. at 351-53; *see also Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). The Supreme Court has strictly limited the types of cases for which there may be an actual injury:

> *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Lewis, 518 U.S. at 355. "Thus, a prisoner's right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc). Moreover, the underlying action must have asserted a non-frivolous claim. *Lewis*, 518 U.S. at 353; *accord Hadix v. Johnson*, 182 F.3d 400, 405 (6th Cir. 1999) (*Lewis* changed actual injury to include requirement that action be non-frivolous).

In addition, the Supreme Court squarely has held that "the underlying cause of action . . . is an element that must be described in the complaint, just as much as allegations must describe the official acts frustrating the litigation." *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (citing *Lewis*, 518 U.S. at 353 & n.3). "Like any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant." *Id.* at 416.

Plaintiff's allegations do not support a claim that he was denied access to the courts. Nothing prevented Plaintiff from drafting and submitting a complaint for habeas corpus, nor does he allege facts suggesting that Defendants would refuse to copy such a complaint. Plaintiff did not attempt to submit such a complaint. Instead, he simply completed form MC 203. However, MC 203 is not a request for habeas corpus relief, but an actual writ of habeas corpus, which requires the signature of a state-court judge. *See* Michigan State Court Administrative Office (SCAO) Form MC 203, "Writ of Habeas Corpus," courts.mi.gov/Administration/SCAO/Forms/courtforms/mc203.pdf (last visited Dec. 12, 2017). Plaintiff is not authorized to sign such a form, and the form is not a proper vehicle for seeking habeas corpus relief in the state courts. As a consequence, by denying Plaintiff copies of form MC 203, Defendants did not cause actual injury.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Defendants Miller, Wallace, and Russell will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A Judgment consistent with this Opinion will be entered.

Dated: December 15, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY ANDERSON,

Plaintiff,

v.

REX MILLER et al.,

Defendants.
/

Case No. 1:17-cv-1048

Honorable Robert J. Jonker

JUDGMENT

In accordance with the Order issued this date:

IT IS ORDERED that Plaintiff's action be **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and 42 U.S.C. § 1997e(c).

Dated: December 15, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JERRY ANDERSON II, Plaintiff-Appellant, v. REX MILLER, Librarian, official and personal capacity, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

Jerry Anderson II, a pro se Michigan prisoner, appeals the district court's judgment dismissing his civil-rights complaint filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In his complaint, Anderson named the following defendants in their official and personal capacities: Rex Miller, librarian at Earnest C. Brooks Correctional Facility; Melody Wallace, litigation coordinator for the Michigan Department of Corrections (MDOC) Office of Legal Affairs; and Richard Russell, grievance-section manager for the MDOC Office of Legal Affairs. Anderson alleged that Wallace sent a directive to MDOC employees stating that state habeas Form MC 203 was not to be printed or reproduced under any circumstances and that all copies of the form in the prison law library were to be destroyed. Wallace further noted that future requests for copies or printouts of the form would be denied and that blank copies of the form

would be confiscated as contraband. Anderson alleged that Miller denied him copies of his "completed complaint of habeas corpus, Form MC 203" in accordance with Wallace's directive. Anderson filed a grievance over the denial of his request for copies, and Russell upheld the rejection of his grievance. Anderson claimed that the defendants "conspired to deny me photocopying services of needed legal documents and are hindering my access to the courts and depriving me of my liberty." As relief, Anderson sought preliminary and permanent injunctions removing Wallace's directive and allowing copies to be made in addition to $3 million in compensatory and punitive damages.

Upon initial screening, the district court dismissed Anderson's complaint for failure to state a claim. *See* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The district court determined that Anderson's access-to-the-courts claim failed for lack of an actual injury to his efforts to pursue a non-frivolous legal claim.

This timely appeal followed. Anderson argues that the district court erred in dismissing his complaint for failure to state a claim without affording him an opportunity to offer evidence and that the defendants' actions amount to an arbitrary suspension of the writ of habeas corpus. Anderson moves this court for appointment of counsel.

We review de novo a district court's dismissal of a prisoner's complaint upon initial screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A and 42 U.S.C. § 1997e(c). *Davis v. Prison Health Servs.*, 679 F.3d 433, 437 (6th Cir. 2012). To survive screening under those statutes, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Prisoners have a constitutional right of meaningful access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 821 (1977). To state a claim for denial of access to the courts, a prisoner must show actual injury—that is, actual prejudice to pending or contemplated litigation challenging the prisoner's conviction or conditions of confinement. *Lewis v. Casey*, 518 U.S. 343, 349-55 (1996); *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). "Examples of actual prejudice to pending or contemplated litigation include having a case dismissed, being unable to

file a complaint, and missing a court-imposed deadline." *Harbin-Bey v. Rutter*, 420 F.3d 571, 578 (6th Cir. 2005).

MDOC's directive prohibiting copies of Form MC 203 had no effect on Anderson's ability to file a state habeas petition. Form MC 203 is a form used by the court to issue a writ of habeas corpus. *See* Michigan State Court Administrative Office Form MC 203, "Writ of Habeas Corpus," http://courts.mi.gov/Administration/SCAO/Forms/courtforms/mc203.pdf (last visited Mar. 20, 2018). Michigan law does not require submission of Form MC 203 to initiate a habeas proceeding. *See* Mich. Ct. R. 3.303. Because Anderson failed to allege facts showing an actual injury, the district court properly dismissed his complaint for failure to state a claim.

Accordingly, we **DENY** Anderson's motion for appointment of counsel and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 29, 2018
DEBORAH S. HUNT, Clerk

JERRY ANDERSON II,

Plaintiff-Appellant,

v.

REX MILLER, LIBRARIAN, OFFICIAL AND PERSONAL CAPACITY, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: BOGGS, CLAY, and KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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