

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 4 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IKEMEFULA CHARLES IBEABUCHI,
AKA Charles Ikemefula Ibeabuchi,

Plaintiff-Appellant,

v.

AMY M. WOOD, Clerk of the Court of
Appeals, Div. One, Court of Appeals State
of Arizona,

Defendant-Appellee.

No. 18-16650

D.C. No. 2:17-cv-04592-JAT-JZB
District of Arizona,
Phoenix

ORDER

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On September 10, 2018, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, response to the court's September 10, 2018 order, and opening brief received on October 2, 2018, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

APPENDIX A

All other pending motions are denied as moot.

DISMISSED.

SC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ikemefula Charles Ibeabuchi,
Plaintiff,

v.

Amy M. Wood,
Defendant.

No. CV 17-04592-PHX-JAT (JZB)

ORDER

Plaintiff Ikemefula Charles Ibeabuchi, who is confined in the Arizona State Prison Complex-Eyman, in Florence, Arizona, has filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1). The Court dismissed the Complaint because it failed to state a claim, but granted Plaintiff leave to amend (Doc. 6). Plaintiff has filed a First Amended Complaint (Docs. 8, 11).¹ The Court will dismiss the First Amended Complaint and this action for failure to state a claim.

I. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is

¹ For reasons that are unclear, Plaintiff filed two copies of his First Amended Complaint.

APPENDIX, B.

1 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

2 A pleading must contain a “short and plain statement of the claim *showing* that the
3 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
4 does not demand detailed factual allegations, “it demands more than an unadorned, the-
5 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
6 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Id.*

8 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
9 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable
12 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
13 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
14 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
15 specific factual allegations may be consistent with a constitutional claim, a court must
16 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
17 at 681.

18 But as the United States Court of Appeals for the Ninth Circuit has instructed,
19 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
20 342 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less
21 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
22 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

23 **II. First Amended Complaint**

24 In his one-count First Amended Complaint, Plaintiff asserts violations of his
25 constitutional right to property and equal protection. Plaintiff sues only Amy M. Wood,
26 whom he identifies as the Clerk for Division One of the Arizona Court of Appeals.
27 Plaintiff seeks compensatory relief.

28

1 Plaintiff alleges the following:

2 Plaintiff was deprived of \$280.00, but was not afforded a meaningful post-
3 deprivation remedy by Defendant. Defendant “did not transfer nor credit the Plaintiff’s
4 Deferral Application for a Consolidation of Appeal, in 1 CA-CV 17-0244, which required
5 it.” (Doc. 11 at 3.) Plaintiff alludes to being deprived of the amount of the “filing fees of
6 a waiver granted, which barred it, might had been protected by the absolute quasi-judicial
7 immunity, but the failure to appropriate a post-deprivation remedy was in bad faith, and
8 liable.” (*Id.* at 3-4.) He contends that the Defendant deprived him of federal rights,
9 privileges, and immunities by not returning the \$280.00 and/or “a fair[] review of case in
10 *Charles v. Megwa*,” which further damaged Plaintiff “of disposition of discharge of
11 Attorney-in-Fact, and for reaching settlement contained therein.” (*Id.* at 4-5.)

12 Thus, Plaintiff challenges being assessed a filing fee for an appeal to the Arizona
13 Court of Appeals. He also appears to believe that payment of a filing fee entitled him to
14 a favorable result.

15 **III. Failure to State a Claim Under 42 U.S.C. § 1983**

16 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
17 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
18 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th
19 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d
20 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific
21 injury as a result of the conduct of a particular defendant and he must allege an
22 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,
23 423 U.S. 362, 371-72, 377 (1976).

24 **A. Wood**

25 Plaintiff sues the Clerk for Division One of the Arizona Court of Appeals for acts
26 or omissions by Wood in connection with filing or processing Plaintiff’s appeal and
27 filings therein. “Court clerks have absolute quasi-judicial immunity from damages for
28 civil rights violations when they perform tasks that are an integral part of the judicial

1 process.” *Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir.
2 1987); *see In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (“[W]e have extended
3 absolute quasi-judicial immunity . . . to court clerks and other non-judicial officers for
4 purely administrative acts – acts which taken out of context would appear ministerial, but
5 when viewed in context are actually a part of the judicial function.”). Processing
6 pleadings is an integral part of the judicial process. *Mullis*, 828 F.2d at 1390. Further,
7 immunity is not lost because a clerk makes a mistake or fails to carry out her duties. *Id.*;
8 *see In re Castillo*, 297 F.3d at 952. Accordingly, Wood is entitled to absolute quasi-
9 judicial for acts taken in processing an appeal and Plaintiff’s claims are barred.

10 **B. Equal Protection**

11 Plaintiff also alludes to a violation of his right to equal protection. Generally, “[t]o
12 state a claim . . . for a violation of the Equal Protection Clause . . . [,] a plaintiff must
13 show that the defendants acted with an intent or purpose to discriminate against the
14 plaintiff based upon membership in a protected class.” *Barren v. Harrington*, 152 F.3d
15 1193, 1194 (9th Cir. 1998). Plaintiff has not alleged that he is a member of a protected
16 class.

17 The United States Supreme Court has also recognized “successful equal protection
18 claims brought by a ‘class of one,’ where the plaintiff alleges that [he] has been
19 intentionally treated differently from others similarly situated and that there is no rational
20 basis for the difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562,
21 564 (2000); *see also SeaRiver Maritime Financial Holdings, Inc. v. Mineta*, 309 F.3d
22 662, 679 (9th Cir. 2002). Plaintiff also fails to state a claim under this standard. Plaintiff
23 has failed to allege facts to support that he was treated differently than other similarly
24 situated individuals and there was no rational basis for doing so. Accordingly, Plaintiff
25 fails to state an equal protection claim.

26 **C. Property**

27 Plaintiff also purports to seek relief for deprivation of property absent due process.
28 In *Parratt v. Taylor*, 451 U.S. 527, 541 (1981), the Supreme Court held that due process

1 is not violated when a state employee negligently deprives an individual of property, as
2 long as the state makes available a meaningful post-deprivation remedy. The rationale
3 underlying *Parratt* is that *pre*-deprivation procedures are impractical when the
4 deprivation of property occurs through negligent conduct of a state employee because a
5 state cannot know when such deprivations will occur. *Hudson v. Palmer*, 468 U.S. 517,
6 533 (1984). Moreover, “[w]here a government official’s act causing injury to life,
7 liberty, or property is merely negligent, ‘no procedure for compensation is
8 constitutionally required.’” *Daniels v. Williams*, 474 U.S. 327, 333 (1986) (emphasis
9 added) (quoting *Parratt*, 451 U.S. at 548).

10 The logic of *Parratt* has been extended to intentional *unauthorized* deprivations of
11 property by state actors because a state also cannot know when such deprivations will
12 occur. *Hudson*, 468 U.S. at 533. As with negligent deprivations, where a state makes
13 available a meaningful *post*-deprivation remedy, such as a common-law tort suit against a
14 prison employee for intentional unauthorized deprivations, a federal due process claim is
15 precluded. *Hudson*, 468 U.S. at 534-35; *King v. Massarweh*, 782 F.2d 825, 826 (9th Cir.
16 1986). Arizona tort law provides an adequate post-deprivation remedy, *see* Ariz. Rev.
17 Stat. § 12-821.01, thereby precluding a federal due process claim for any intentional
18 unauthorized deprivation.

19 To the extent that Plaintiff is attempting to assert that he was subjected to an
20 *authorized* deprivation of property absent due process, Plaintiff’s allegations are vague
21 and conclusory. Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404
22 U.S. 519, 520-21 (1972), conclusory and vague allegations will not support a cause of
23 action. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).
24 Further, a liberal interpretation of a civil rights complaint may not supply essential
25 elements of the claim that were not initially pleaded. *Id.* For the reasons discussed,
26 Plaintiff fails to state a claim for deprivation of property without due process.

27 **IV. Dismissal without Leave to Amend**

28 Because Plaintiff has failed to state a claim in his First Amended Complaint, the

1 Court will dismiss his First Amended Complaint. "Leave to amend need not be given if a
2 complaint, as amended, is subject to dismissal." *Moore v. Kayport Package Express,*
3 *Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court's discretion to deny leave to amend is
4 particularly broad where Plaintiff has previously been permitted to amend his complaint.
5 *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).
6 Repeated failure to cure deficiencies is one of the factors to be considered in deciding
7 whether justice requires granting leave to amend. *Moore*, 885 F.2d at 538.

8 Plaintiff has made two efforts at crafting a viable complaint and appears unable to
9 do so despite specific instructions from the Court. The Court finds that further
10 opportunities to amend would be futile. Therefore, the Court, in its discretion, will
11 dismiss Plaintiff's First Amended Complaint without leave to amend.

12 **IT IS ORDERED:**

13 (1) Plaintiff's First Amended Complaint (Doc. 11) and this action are
14 dismissed for failure to state a claim, and the Clerk of Court must enter judgment
15 accordingly.

16 (2) The Clerk of Court must make an entry on the docket stating that the
17 dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

18

19

20

21

22

23

24

25

26

27

28

Dated this 29th day of August, 2018.

James A. Teilborg
Senior United States District Judge