

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAR 22 2019

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

IKEMEFULA CHARLES IBEABUCHI,
AKA Charles Ikemefula Ibeabuchi,

Plaintiff-Appellant,

v.

BANICKI, Officer/ Sheriff's Deputy B3339
(Unit 4E) at 4th Avenue Jail; VAIL, Jail
Commander/ Supervisor A8985 at 4th
Avenue Jail,

Defendants-Appellees.

No. 18-16309

D.C. No. 2:17-cv-04577-JAT-JZB
District of Arizona,
Phoenix

ORDER

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Ibeabuchi's petition for panel rehearing (Docket Entry No. 10) is denied.

No further filings will be entertained in this closed case.

Appendix C.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 31 2018

FOR THE NINTH CIRCUIT

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

IKEMEFULA CHARLES IBEABUCHI,
AKA Charles Ikemefula Ibeabuchi,

Plaintiff-Appellant,

v.

BANICKI, Officer/ Sheriff's Deputy B3339
(Unit 4E) at 4th Avenue Jail; VAIL, Jail
Commander/ Supervisor A8985 at 4th
Avenue Jail,

Defendants-Appellees.

No. 18-16309

D.C. No. 2:17-cv-04577-JAT-JZB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

James A. Teilborg, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Arizona state prisoner Ikemefula Charles Ibeabuchi, AKA Charles

Ikemefula Ibeabuchi, appeals pro se from the district court's judgment dismissing

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appendix A, (2-pages)

his 42 U.S.C. § 1983 action alleging various constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012). We affirm.

The district court properly dismissed Ibeabuchi's action because Ibeabuchi failed to allege facts sufficient to state a plausible claim for relief. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Lopez v. Dep't of Health Servs.*, 939 F.2d 881, 883 (9th Cir. 1991) (setting forth elements of a § 1983 claim).

We do not consider documents not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

AFFIRMED.

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ikemefula Charles Ibeabuchi,

10 Plaintiff,

11 v.

12 Unknown Banicki, et al.,

13 Defendants.
14

NO. CV-17-04577-PHX-JAT (JZB)

JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed July
18 11, 2018, Plaintiff to take nothing, and the complaint and action are dismissed for failure
19 to state a claim. This dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

20 Brian D. Karth

District Court Executive/Clerk of Court

21
22 July 11, 2018

23 s/ D. Draper

24 By Deputy Clerk
25
26
27
28

JL

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

Ikemefula Charles Ibeabuchi,
Plaintiff,

v.

Unknown Banicki, et al.,

Defendants.

No. CV 17-04577-PHX-JAT (JZB)

ORDER

On December 11, 2017, Plaintiff Ikemefula Charles Ibeabuchi, who is confined in the Arizona State Prison Complex-Eyman, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed In Forma Pauperis. In a March 23, 2018 Order, the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

On April 16, 2018, Plaintiff filed his First Amended Complaint. In a June 25, 2018 Order, the Court dismissed the First Amended Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the Order.

On July 3, 2018, Plaintiff filed a Second Amended Complaint (Doc. 12). The Court will dismiss the Second Amended Complaint and this action.

....

Appendix B (6-pages)

1 **I. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or an employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
6 which relief may be granted, or that seek monetary relief from a defendant who is
7 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

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

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

1 **II. Second Amended Complaint**

2 In his two-count Second Amended Complaint, Plaintiff sues Sheriff's Deputy
3 Banicki and Jail Commander Vail. Plaintiff asserts claims of "failure to follow the rules"
4 and "enforcement of judgment." He seeks "absolute discharge" or "the enforcement of
5 the judgment of the external referee, as lawfully from Probation Court's consideration"
6 and compensatory damages.

7 In Count One, Plaintiff alleges that his constitutional rights to freedom and equal
8 protection were violated when Defendant Banicki failed to follow the rules implemented
9 by jail policy to return "inmate's procedurally entitled receipts." Plaintiff asserts that
10 "redress was judicious and granting relief by external referee, because 'in the strictest
11 interpretation of the rules' the Defendant violated the Plaintiff's constitutional rights;
12 whose abandonment caused Plaintiff's imprisonment." Plaintiff claims that "Defendant's
13 inaction to the granted relief caused Plaintiff the loss of freedom which caused
14 imprisonment, violating Plaintiff's Equal Protection."

15 In Count Two, Plaintiff alleges that his constitutional rights to freedom, due
16 process, protection from cruel and unusual punishment, and equal protection were
17 violated when Defendant Vail failed to enforce the judgment of the external referee,
18 which found in Plaintiff's favor and was "accepted by both parties as judicious."
19 Plaintiff asserts that "the abandonment, subsequently, denied the Probation Court's
20 attention on February 12, 2018, Order," which "committed Plaintiff to prison without
21 consideration of the relief, therein, at-law." Plaintiff claims that he was "injured to a
22 commitment into an institution by court order."

23 **III. Failure to State a Claim**

24 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
25 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
26 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th
27 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d
28 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific

1 injury as a result of the conduct of a particular defendant and he must allege an
2 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,
3 423 U.S. 362, 371-72, 377 (1976).

4 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
5 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
6 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
7 liberal interpretation of a civil rights complaint may not supply essential elements of the
8 claim that were not initially pled. *Id.*

9 **A. Count One**

10 Plaintiff designates Count One as a claim for “failure to follow the rules.” As the
11 Court informed Plaintiff in its March 23, 2018 Order, mere failure to comply with a jail
12 rule, as Plaintiff alleges against Defendant Banicki, does not, absent more, rise to the
13 level of a constitutional violation. Further, mere non-compliance with jail rules does not
14 afford a basis for release from custody. Because Plaintiff fails to allege facts to support
15 the violation of a constitutional right in Count One, it will be dismissed.

16 **B. Count Two**

17 Plaintiff designates Count Two as a claim for “enforcement of judgment.”
18 Plaintiff’s sole allegation against Defendant Vail is that Vail failed to enforce the
19 judgment of the external referee. “The right to petition the government for redress of
20 grievances . . . does not guarantee a favorable response, or indeed any response, from
21 state officials.” *Baltoski v. Pretorius*, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003); *see*
22 *also Ashann-Ra v. Virginia*, 112 F. Supp. 2d 559, 569 (W.D. Va. 2000) (failure to comply
23 with state’s grievance procedure is not actionable under § 1983 and does not compromise
24 an inmate’s right of access to the courts). Further, although prisoners have a First
25 Amendment right to file grievances, *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir.
26 2005), “[t]here is no legitimate claim of entitlement to a grievance procedure,” *Mann v.*
27 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988), and the failure to follow grievance procedures
28 does not give rise to a due process claim. *See Flournoy v. Fairman*, 897 F. Supp. 350,

1 354 (N.D. Ill. 1995) (jail grievance procedures did not create a substantive right
2 enforceable under § 1983); *Spencer v. Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986)
3 (violations of grievance system procedures do not deprive inmates of constitutional
4 rights). “[N]o constitutional right was violated by the defendants’ failure, if any, to
5 process all of the grievances [plaintiff] submitted for consideration.” *Buckley v. Barlow*,
6 997 F.2d 494, 495 (8th Cir. 1993). Plaintiff fails to allege facts to support that Vail in
7 any way violated Plaintiff’s constitutional rights. Accordingly, Count Two will be
8 dismissed for failure to state a claim.

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

10 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the
11 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given
12 if a complaint, as amended, is subject to dismissal.” *Moore v. Kayport Package Express,*
13 *Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is
14 particularly broad where Plaintiff has previously been permitted to amend his complaint.
15 *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).
16 Repeated failure to cure deficiencies is one of the factors to be considered in deciding
17 whether justice requires granting leave to amend. *Moore*, 885 F.2d at 538.

18 Plaintiff has made three efforts at crafting a viable complaint and appears unable
19 to do so despite specific instructions from the Court. The Court finds that further
20 opportunities to amend would be futile. Therefore, the Court, in its discretion, will
21 dismiss Plaintiff’s Second Amended Complaint without leave to amend.

22 **IT IS ORDERED:**

23 (1) Plaintiff’s Second Amended Complaint (Doc. 12) and this action are
24 **dismissed** for failure to state a claim, and the Clerk of Court must enter judgment
25 accordingly.

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

28

(3) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal of this decision would be taken in good faith and finds Plaintiff may appeal in forma pauperis.

James A. Teilborg
Senior United States District Judge