

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

No: 19-1059

James L. Toney

Plaintiff - Appellant

v.

Corporal Heath Dickson, Malvern Police Department (MPD); Chief Donnie Taber, MPD;
Assistant Jim Bailey, MPD

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:18-cv-06049-PKH)

JUDGMENT

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a). Appellant's motion to proceed on appeal in forma pauperis is granted. Appellant's motion for appointment of counsel is denied as moot.

June 17, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Civil Case No. [#] 19-1059
Appeal from case No. 6:18-cv-06049

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES LEONARD TONEY

PLAINTIFF

v.

Civil No. 6:18-CV-06049

CORPORAL HEATH DICKSON, CHIEF
DONNIE TABER, and ASSISTANT CHIEF
JIM BAILEY (all of Malvern Police
Department)

DEFENDANTS

ORDER

The case is before the Court for preservice screening under the provisions of the Prison Litigation Reform Act (PLRA). Pursuant to 28 U.S.C. § 1915A, the Court has the obligation to screen any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

I. BACKGROUND

Plaintiff filed his Complaint on May 22, 2018. (ECF No. 1). He alleges his constitutional rights were violated when he was “victimized by reckless negligence.” (*Id.* at 7). This claim centers on a confrontation Plaintiff had with police on August 23, 2017. Plaintiff submitted a copy of an offense/incident report from the Malvern Police department indicating that officers, including Defendant Dickson, attempted to serve a warrant on Plaintiff that day, but were called away to a “physical fight with injury” after making contact with Plaintiff. (*Id.* at 10). Plaintiff alleges there was no warrant and he was therefore harassed, targeted and profiled. (*Id.* at 8-10). Plaintiff further alleges the Malvern Police Department and Defendant Dickson filed false charges against him in order to force him to provide information in a murder investigation. (*Id.* at 11-13).

Plaintiff proceeds against Defendants in both their official and personal capacity. (*Id.* at 16). He seeks compensatory and punitive damages. (*Id.* at 17).

II. LEGAL STANDARD

Under the PLRA, the Court is obligated to screen the case prior to service of process being issued. The Court must dismiss a complaint, or any portion of it, if it contains claims that: (1) are frivolous, malicious, or fail to state a claim upon which relief may be granted; or, (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A claim is frivolous if “it lacks an arguable basis either in law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim fails to state a claim upon which relief may be granted if it does not allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “In evaluating whether a *pro se* plaintiff has asserted sufficient facts to state a claim, we hold ‘a *pro se* complaint, however inartfully pleaded ... to less stringent standards than formal pleadings drafted by lawyers.’” *Jackson v. Nixon*, 747 F.3d 537, 541 (8th Cir. 2014) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). Even a *pro se* Plaintiff must allege specific facts sufficient to support a claim. *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

III. ANALYSIS

Plaintiff failed to state any plausible constitutional claims. Research by the Court indicates there were two outstanding arrest warrants against Plaintiff in two Hot Spring County criminal cases during the month of August 2017.¹ On August 3, 2017, warrant No. 30BW-17-407 was issued in *State v. James Toney*, Case No. 30CR-17-260 for possession of a controlled substance. This warrant was served on Plaintiff in the Hot Spring County Jail on August 11, 2018. Warrant

¹ This information is publicly available on Arkansas CourtConnect, <https://courts.arkansas.gov/administration/acap/courtconnect>.

No. 30BW-17-394 was issued on July 31, 2017, in *State v. James Toney*, Case No. 30CR-17-222 for failure to appear. Plaintiff was served with this warrant on August 31, 2017. Plaintiff's allegation that the officers were harassing him because there was no warrant to serve on August 23, 2017, is therefore without merit. *See Body Cam*

The existence of these warrants also negates Plaintiff's allegation that charges were filed against him solely to force him to cooperate in a murder investigation. *See Messerschmidt v. Millender*, 132 S. Ct. 1235, 1245 (2012) ("the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner"). A suspect has no constitutional right to be free from law enforcement investigation when there is probable cause that the suspect has committed a crime. *Will confirm FBI That I was never by Suspect Dec 14, 2016 Interviewed by FBI*

Likewise, there is no constitutional right to be free from solicitation to provide help in a police investigation. *See Illinois v. Lidster*, 540 U.S. 419, 425 (2004) (Law enforcement officers do not violate the Fourth Amendment by asking individuals to provide information "or otherwise cooperate" in police investigatory work.). *Look for Body Cam*

For these reasons, IT IS ORDERED that Plaintiff's claims are DISMISSED WITHOUT PREJUDICE. The dismissal of this action constitutes a "strike" under 28 U.S.C. § 1915(g). The Clerk is therefore DIRECTED to place a § 1915(g) strike flag on the case. *Toney v. Hunter is not me Eastern Division*

Plaintiff had previously filed two lawsuits which were dismissed as frivolous, malicious or failed to state a claim upon which relief may be granted.² This case therefore constitutes Plaintiff's third strike pursuant to 28 U.S.C. § 1915(g). The Clerk is therefore DIRECTED to place a §

² *Toney v. Hunter, et al*, Civil No. 4:02-cv-00286 (E.D. Ark.) (Report and Recommendation entered on June 5, 2002, recommending dismissal for failure to state a claim and that the dismissal count as a strike. Adopted by Order and Judgment entered July 2, 2002, stating among other things, that the dismissal counts as a strike. Appeal dismissed for failure to prosecute on November 10, 2002); *Toney v. Golden, et al.*, Civil No. 6:02-cv-06125 (W.D. Ark.) (Report and Recommendation entered on August 9, 2002, recommending dismissal on the grounds the claims are frivolous and fail to state claims upon which relief may be granted. Adopted by order entered August 27, 2002. No appeal was taken). Plaintiff's ADC number 107698 was used to identify him in both of these cases.

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1915(g) flag barring Plaintiff from proceeding IFP in future cases unless he is under imminent danger of serious physical injury.

IT IS SO ORDERED this 12th day of July 2018.

/s/ P. K. Holmes, III

P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES L. TONEY

PLAINTIFF

v.

Civil No. 6:17-cv-06100

CORPORAL HEATH DICKSON,
Malvern Police Department ("MPD");
SERGEANT KEITH PRINCE, MPD;
ASSISTANT CHIEF JIM BAILEY, MPD;
and CHIEF OF POLICE DONNIE
TABER, MPD

DEFENDANTS

MEMORANDUM OPINION

This is a civil rights action filed *pro se* by Plaintiff, James L. Toney, under 42 U.S.C. § 1983. Currently before the Court is a Motion for Summary Judgment filed by Defendants Heath Dickson, Keith Prince and Jim Bailey. (ECF No. 55). Plaintiff filed a Response (ECF No. 60) and Defendants filed a Reply. (ECF No. 63). The matter is ripe for consideration.

I. BACKGROUND

Plaintiff is currently an inmate in the Arkansas Department of Correction, Tucker Unit. This case arises from events that occurred on August 23, 2017, while Defendants Dickson and Prince were attempting to execute an arrest warrant on Plaintiff at his home. At the time of the incident, Defendants Dickson and Prince were officers with the City of Malvern Police Department and Bailey was the Assistant Chief of Police. Viewed in the light most favorable to Plaintiff, the relevant facts are as follows.¹

On August 23, 2017, Defendants Dickson and Prince arrived at Plaintiff's residence at 9:09 p.m. to execute an arrest warrant that came through the National Crime Information Center

¹Defendants submitted Defendant Dickson's body camera video of the August 23, 2017, incident in support of their motion for summary judgment. (ECF No. 57-1, filed conventionally with the Clerk). The Court has relied in large part on the video footage in outlining the relevant facts.

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EXHIBIT
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billfold. Mr. Toney told him not to touch it because the billfold belonged to someone else. (*R. Dist. Ct. Docket No. 64*). Mr. Toney then advised Officers Dickson and Prince that his billfold must be in his truck and he walked toward the front door. (*R. Dist. Ct. Docket No. 57 ¶ 11*).

Officers Dickson and Prince followed Mr. Toney outside of the home to his vehicle and watched Mr. Toney search the vehicle for the warrant. (*R. Dist. Ct. Docket No. 57 ¶ 12*). While Mr. Toney was looking in the front seat of his vehicle for the warrant papers, Officers Dickson and Prince received a call concerning an assault with physical injury at another location. (*R. Dist. Ct. Docket No. 57 ¶ 13*). The officers asked Mr. Toney to find the warrant so that they “didn’t have to take him in.” (*R. Dist. Ct. Docket No. 57 ¶ 14*). Officers Dickson and Prince then left Mr. Toney’s residence. The entire incident lasted just under three minutes.

Approximately twenty (20) minutes after Officers Dickson and Prince left Mr. Toney’s home, the warrant for Mr. Toney’s arrest that Officers Dickson and Prince had relied on was cleared rendering it inactive. (*R. Dist. Ct. Docket No. 57 ¶ 16*). After learning that the warrant had cleared the NCIC system that evening, Officers Dickson and Prince returned to Plaintiff’s residence. Officer Dickson knocked on Mr. Toney’s door, but Mr. Toney did not open it. Officer Dickson advised Mr. Toney through the closed door that the warrant was invalid, and that they would not be coming back. (*R. Dist. Ct. Docket No. 57 ¶¶ 17-18*).

CLOSED,APPEAL,1915(g),KLK

**U. S. District Court
Western District of Arkansas (Hot Springs)
CIVIL DOCKET FOR CASE #: 6:18-cv-06049-PKH**

Toney v. Dickson et al
Assigned to: Honorable P. K. Holmes, III
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/22/2018
Date Terminated: 07/12/2018
Jury Demand: None
Nature of Suit: 555 Prisoner
Petitions - Prison Conditions
Jurisdiction: Federal Question

Plaintiff**James Leonard Toney**

represented by **James Leonard Toney**
107698
ADC - TUCKER UNIT
P. O. Box 240
Tucker, AR 72168-0240
PRO SE

V.

Defendant

Corporal Heath Dickson
Malvern Police Department (MPD)

Defendant

Chief Donnie Taber
MPD

Defendant

Assistant Chief Jim Bailey
MPD

Date Filed	#	Docket Text
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05/22/2018	<u>1</u>	COMPLAINT REFERRED (42:1983) against Jim Bailey, Heath Dickson, Donnie Taber, filed by James Leonard Toney.(mjm) (Entered: 05/22/2018)
05/22/2018	<u>2</u>	MOTION for Leave to Proceed in forma pauperis (42:1983) by James Leonard Toney. Motions referred to James R. Marschewski.(mjm) (Entered: 05/22/2018)
05/22/2018	<u>3</u>	<p>ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis (42:1983). Pursuant to the provisions of the Prisoner Litigation Reform Act, the Clerk is directed to collect the filing fee from the Plaintiff.</p> <p>Plaintiff is advised that he is required to immediately inform the Court of any change of address. If Plaintiff is transferred to another jail or prison or released, he shall have 30 days from the date of transfer or release in which to notify the Court of the new address.</p> <p>Plaintiff shall submit a change of address on a separate piece of paper entitled Notice to the Court of Change of Address and <u>not</u> include any motions or otherwise request relief in this document. The notice shall contain only information pertaining to the address change. The case will be subject to dismissal if Plaintiff fails to inform the Court of an address change. The Clerk is directed to collect the filing fee in the amount of \$350.00. Signed by Honorable Barry A. Bryant on May 22, 2018. (mjm) (Entered: 05/22/2018)</p>
05/22/2018	<u>4</u>	Magistrate Notice/Consent Furnished to Plaintiff. (mjm) (Entered: 05/22/2018)
05/22/2018	<u>6</u>	CLERK'S ORDER re PLRA Fee directing Hot Spring County Jail to collect from petitioner's prison account monthly payments in amount equal to 20% of preceding month's income credited to account until \$350.00 filing fee is paid in full. (mjm) (Entered: 05/22/2018)
07/12/2018	<u>7</u>	ORDER that Plaintiff's claims are DISMISSED WITHOUT PREJUDICE as set forth. Signed by Honorable P. K. Holmes, III on July 12, 2018. (lw) (Entered: 07/12/2018)
07/23/2018		Mail Returned as Undeliverable marked Not Here. Mail originally sent to James Leonard Toney at Hot Spring County Jail, 1 Detention Lane, Malvern, AR 72104 including <u>7</u> Order - Memo. No new address available. (mjm) (Entered: 07/23/2018)

08/20/2018	<u>8</u>	NOTICE OF APPEAL as to <u>7</u> Order by James Leonard Toney. (via U.S. Postal Service: James Leonard Toney) (hnc) (Entered: 08/20/2018)
08/20/2018		Set Deadlines: Motion to Appeal IFP due by 9/5/2018. Blank IFP mailed to Plaintiff. (hnc) (Entered: 08/20/2018)

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