[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10152
Non-Argument Calendar

D.C. Docket No. 4:18-cv-00249-HLM

MITCHELL LAVERN LUDY,

Plaintiff-Appellant,

versus

JAMES W. MILLS,
BRAXTON T. COTTON,
Vice Chairman of Board of Pardons and Parole,
BRIAN OWENS,
JACQUELINE BUNN,
TERRY E. BARNARD,
Chairman of Board of Pardons and Paroles,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(June 25, 2019)

Before MARTIN, JORDAN, and NEWSOM, Circuit Judges.

PER CURIAM:

Mitchell Ludy, a state prisoner proceeding *pro se*, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim. Ludy asserts that the Georgia State Board of Pardons and Paroles failed to include a statutorily required eligibility requirement for parole in its rules and regulations, which, according to him, violated his right to due process by precluding him from knowing the eligibility criteria for parole.

A district court must dismiss a complaint if it finds that the complaint fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b)(1). We review *de novo* a district court's dismissal for failure to state a claim under 28 U.S.C. § 1915A(b)(1). *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278–79 (11th Cir. 2001) (*per curiam*). In evaluating dismissals under § 1915A(b)(1), we use the same standard that governs dismissals under Fed. R. Civ. P. 12(b)(6). *Id.* Allegations in a complaint are accepted as true and construed "in the light most favorable to the plaintiff." *Leib v. Hillsborough Cty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir. 2009). *Pro se* pleadings are liberally construed. *Leal*, 254 F.3d at 1280.

To prevail on his § 1983 procedural due process claim, Ludy must prove that he was deprived of a constitutionally protected liberty interest. *Cryder v.*

Oxendine, 24 F.3d 175, 177 (11th Cir. 1994). We have previously held, however, that the Georgia parole statutes do not create a liberty interest in parole. *Jones v. Ray*, 279 F.3d 944, 946 (11th Cir. 2001) (*per curiam*). Therefore, even construing his pleadings liberally, Ludy does not have a legitimate claim that entitles him to relief. Accordingly, the district court did not err in dismissing Ludy's § 1983 complaint for failure to state a claim.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MITCHELL LAVERN LUDY, Plaintiff pro se, v. JAMES W. MILLS; et al., Defendants.	PRISONER CIVIL RIGHTS 42 U.S.C. § 1983 CIVIL ACTION NO. 4:18-CV-0249-HLM-WEJ

ORDER AND
FINAL REPORT AND RECOMMENDATION

Plaintiff pro se, Mitchell Lavern Ludy, presently confined in the Calhoun State Prison in Morgan, Georgia, has filed this civil rights action. The matter is before the Court for consideration of plaintiff's request to proceed in forma pauperis [2] and for an initial screening under 28 U.S.C. § 1915A. For the reasons stated below, plaintiff's request to proceed in forma pauperis [2] is **GRANTED**, and the undersigned **RECOMMENDS** that this action be **DISMISSED** for failure to state a claim.

I. APPLICATION TO PROCEED IN FORMA PAUPERIS

A review of plaintiff's financial affidavit [2] reflects that he has filed an authorization allowing his custodian to withdraw funds from his inmate account and that he has insufficient funds in his inmate account to pay an initial partial filing

fee. Accordingly, plaintiff's request to proceed in forma pauperis [2] is **GRANTED**, and plaintiff need not pay an initial partial filing fee. Plaintiff shall, however, be obligated to pay the full statutory filing fee of $350.00 as funds are deposited in his inmate account pursuant to the provisions of 28 U.S.C. § 1915(b)(2). Specifically, the balance of said filing fee shall be paid by, or on behalf of plaintiff, in monthly or other incremental payments in the amount of twenty percent of the preceding month's income credited to plaintiff's inmate account in each month in which his account balance exceeds $10.00. Pursuant to 28 U.S.C. § 1915(b)(2), the institution administering the plaintiff's inmate account shall withdraw such amounts from the account and remit the same to the Clerk, U.S. District Court, until the filing fee is paid in full, as verified by separate notice from the Clerk to the warden of the institution.

II. FRIVOLITY SCREENING

A. Standard of Review

The Court is required to screen "as soon as practicable" a prisoner complaint which "seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner complaint that is either: (1) "frivolous, malicious, or fails to state a claim upon

which relief may be granted"; or (2) "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that an act or omission committed by a person acting under color of state law deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States. Hale v. Tallapoosa Cty., 50 F.3d 1579, 1582 (11th Cir. 1995). If a litigant cannot satisfy those requirements, or fails to provide supporting factual allegations, then the complaint is subject to dismissal for failure to state a claim. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (noting that "[f]actual allegations must be enough to raise a right to relief above the speculative level," and that a complaint "must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action" (citations omitted)); see also Ashcroft v. Iqbal, 556 U.S. 662, 681-84 (2009) (holding that Twombly "expounded the pleading standard for 'all civil actions,'" to wit, conclusory allegations that "amount to nothing more than a 'formulaic recitation of the elements' of a constitutional . . . claim" are "not entitled to be assumed true," and, to escape dismissal, complaint must allege facts sufficient to move claims "'across the line from conceivable to plausible'" (citations omitted)); Papasan v. Allain, 478 U.S. 265, 286 (1986) (accepting as true only plaintiff's

factual contentions, but not his or her legal conclusions couched as factual allegations); Beck v. Interstate Brands Corp., 953 F.2d 1275, 1276 (11th Cir. 1992) (per curiam) (court is "not permitted to read into the complaint facts that are not there").

B. Discussion

Plaintiff brings this action against the chairman and members of the Georgia Board of Pardons and Paroles (the "Parole Board"). (Compl. [1] 13.) Plaintiff complains that the Parole Board has violated his constitutional rights by failing to adopt a parole eligibility requirement, which has prevented plaintiff, who is serving a parolable life sentence, from "knowing what is required of him to make parole." (Id.) Plaintiff asserts that the Parole Board's "unfettered discretion" to determine whether plaintiff should be granted parole has converted his sentence to life without the possibility of parole. (Id. at 14.) As relief, plaintiff asks the Court to either enjoin defendants from denying him parole or direct them to adopt a parole eligibility requirement and to declare that such a requirement would create a liberty interest in parole for prisoners, like plaintiff, who are currently serving parolable life sentences. (Id. at 14-15.)

Georgia law does require that the Parole Board include an "eligibility requirement" for parole, but that refers to a time period when a prisoner will be

automatically considered, and later reconsidered, for parole and does not require that the Parole Board adopt criteria that would result in mandatory release from prison. Day v. Hall, No. 5:06-CV-52 (MTT), 2010 WL 3745300, at *3 (M.D. Ga. Aug. 3, 2010) (citing O.C.G.A. § 42-9-45(a)), R. & R. adopted, 2010 WL 3744320, at *1 (M.D. Ga. Sept. 20, 2010). A Georgia prisoner does not have a constitutionally protected liberty interest in parole. Jones v. Ray, 279 F.3d 944, 946 (11th Cir. 2001) (per curiam). Furthermore, the Court has no general power to direct state officials in the performance of their duties. See Brown v. Lewis, 361 F. App'x 51, 56 (11th Cir. 2010) (per curiam) (citing Moye v. Clerk, DeKalb Cnty. Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973)). According, plaintiff has failed to state a claim for which relief may be granted.

III. CONCLUSION

For the reasons stated above, plaintiff's request to proceed in forma pauperis [2] is **GRANTED**, and the undersigned **RECOMMENDS** that this action be **DISMISSED** for failure to state a claim.

The Clerk **SHALL** transmit a copy of this Order to the Warden of Calhoun State Prison. The Warden, or his designee, shall collect the aforesaid monthly payments from the plaintiff's inmate account and remit such payments to the Clerk

of the United States District Court for the Northern District of Georgia until the $350.00 filing fee is paid in full.

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

SO ORDERED AND RECOMMENDED, this 27th day of November, 2018.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MITCHELL LAVERN LUDY,

Plaintiff,

v.

JAMES W. MILLS, et al.,

Defendants.

CIVIL ACTION FILE
NO. 4:18-CV-0249-HLM-WEJ

ORDER

This is a civil rights action filed under 42 U.S.C. § 1983 by a prisoner proceeding pro se. The case is before the Court on the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [3] and on Plaintiff's Objections to the Final Report and Recommendation [7].

I. Standard of Review

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court therefore must conduct a de novo review if a party files "a proper, specific objection" to a factual finding contained in the report and recommendation. Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006); Jeffrey S. by Ernest S. v. State Bd. of Educ., 896 F.2d 507, 513 (11th Cir. 1990). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort, 208 F. App'x at 784. Legal conclusions, of course, are subject to de novo review even if no party specifically objects. United States v. Keel, 164 F.

App'x 958, 961 (11th Cir. 2006); United States v. Warren, 687 F.2d 347, 347 (11th Cir. 1982).

II. Discussion

On November 27, 2018, Judge Johnson issued his Order Final Report and Recommendation. (Order & Final Report & Recommendation (Docket Entry No. 3).) Judge Johnson granted Plaintiff's request to proceed in forma pauperis, but he recommended that the Court dismiss this action for failure to state a claim for relief. (See generally id.)

The Court extended the time period for Plaintiff to file Objections for thirty days after December 13, 2018. (Order of Dec. 13, 2018 (Docket Entry No. 6).) Plaintiff filed Objections within that time period. (Objs. (Docket Entry No. 7).) The Court finds that the matter is ripe for resolution.

The Court agrees with Judge Johnson that Plaintiff's Complaint fails to state a viable § 1983 claim. (Order & Final

Report & Recommendation at 4-5.) With all due respect to Plaintiff, nothing in his Objections warrants a different conclusion. (Objs.) The Court finds that Judge Johnson properly evaluated Plaintiff's Complaint, and it overrules Plaintiff's Objections and adopts the Order and Final Report and Recommendation.

III. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [3], and **OVERRULES** Plaintiff's Objections to the Final Report and Recommendation [7]. The Court **DISMISSES** this action **WITHOUT PREJUDICE**, and **DIRECTS** the Clerk to **CLOSE** this case.

IT IS SO ORDERED, this the 2nd day of January, 2019.

SENIOR UNITED STATES DISTRICT JUDGE