

Case No. 20-1278

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

KUSHAWN S. MILES, aka Kushawn Miles-El

Plaintiff - Appellant

v.

IONIA CORRECTIONAL FACILITY; JAMES R. SCHIEBNER, Deputy Warden; JEFFREY LARSON, Residential Unit Manager; MARCUS TURNER, Prisoner Counselor; JOSEPH NOVAK, Librarian; SHAWN RYKSE, Lieutenant; SAMANTHA FARRELL, Transfer Coordinator; named as, Jane/John Doe

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by October 01, 2020.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk



Issued: November 02, 2020

No. 20-1278

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Sep 01, 2020

DEBORAH S. HUNT, Clerk

KUSHAWN S. MILES, aka Kushawn Miles-El,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 IONIA CORRECTIONAL FACILITY, et al.,)
)
 Defendants-Appellees.)

ORDER

Before: BUSH, Circuit Judge.

Kushawn S. Miles, a Michigan prisoner proceeding pro se, moves this court to grant him permission to proceed in forma pauperis in his appeal from the district court's dismissal of some of his 42 U.S.C. § 1983 claims pursuant to the Prison Litigation Reform Act ("PLRA"), *see* 28 U.S.C. §§ 1915(e)(2), 1915A, and 42 U.S.C. 1997e(c), and its grant of summary judgment in favor of the defendants on his remaining § 1983 claims.

Miles alleged that in March 2016—while he was incarcerated at the Ionia Correctional Facility ("ICF")—Prisoner Counselor Marcus Turner verbally assaulted him in front of his entire housing unit. As part of his tirade, Turner allegedly put Miles's life in danger by informing the other inmates in that unit that they would be subject to additional scrutiny and shakedowns because of Miles. Miles subsequently filed a grievance against Turner regarding his tirade and submitted a formal typewritten complaint to ICF Deputy Wardens James Schiebner and John Christiansen. Residential Unit Manager Jeffrey Larson allegedly told Miles that he would suffer adverse consequences, such as the loss of his job as a legal writer or transfer to a less desirable prison, if he pursued his grievance and complaint against Turner. Miles further alleged that Turner also wrote a false Class III misconduct report against him, which was ultimately dismissed.

Noticing that Miles's complaint had been typewritten the same day as Turner's alleged tirade and used a font not found on the electronic typewriters available for inmate use, prison officials surmised that Miles must have drafted it using a legal writer's laptop that was not permitted for personal use. Miles disputed this allegation and claimed that he paid another prisoner to type the complaint for him but refused to provide the name of that prisoner. At Deputy Warden Schiebner's behest, Librarian Joe Novak allegedly wrote a false Class II misconduct report against Miles for misuse of state property and removed Miles from his legal-writer job. Lieutenant S. Rykse served as the officer at Miles's misconduct hearing and allegedly refused to consider any of Miles's exculpatory evidence. Lieutenant Rykse found Miles guilty and imposed thirty days' loss of privileges. Miles alleged that Deputy Warden Schiebner, Residential Unit Manager Larson, and Turner then signed off on papers that resulted in an unnamed ICF transfer coordinator transferring him to a less desirable prison.

In July 2018, Miles filed this lawsuit against the following defendants: ICF; Deputy Wardens James Schiebner and John Christiansen; Residential Unit Manager Larson; Prisoner Counselor Turner; Librarian Novak; Lieutenant Rykse; and the unnamed transfer coordinator, who was later identified as Samantha Farrell. He alleged that the defendants violated and/or conspired to violate his First Amendment right to be free from retaliation for engaging in protected conduct, as well as his Fourteenth Amendment rights to procedural due process and equal protection of the laws. He also alleged several state-law claims. Miles sued the individual defendants in their personal capacity only and sought damages, a declaratory judgment, and injunctive relief. '

On initial screening, the district court dismissed ICF as a defendant and dismissed Miles's Fourteenth Amendment claims for failing to state a claim upon which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(b), and 42 U.S.C. § 1997e(c). The district court then ordered the clerk to serve the remaining defendants with respect to Miles's First Amendment retaliation claims, as well as Miles's related claim that the defendants accomplished their retaliation by framing him with false evidence. The parties subsequently stipulated to the dismissal of Deputy Warden Christiansen from the lawsuit and filed cross-motions for summary judgment. On the

recommendation of a magistrate judge and over Miles's objections, the district court granted the defendants' motion for summary judgment, denied Miles's motion for summary judgment, and declined to exercise jurisdiction over Miles's state-law claims. The district court also certified, pursuant to 28 U.S.C. § 1915(a)(3), that Miles had no good-faith basis to appeal. This appeal followed.

When a district court has certified that a pro se plaintiff's appeal is not taken in good faith, the plaintiff may file a motion in this court for leave to proceed in forma pauperis. Fed. R. App. P. 24(a)(5). This court will grant an in forma pauperis motion only if it is persuaded that the appeal is being taken in good faith, i.e., that the issues to be raised are not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is frivolous if it lacks an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Callihan v. Schneider*, 178 F.3d 800, 804 (6th Cir. 1999). This court should grant an in forma pauperis motion where the claims on appeal deserve "further argument or consideration." *Coppedge*, 369 U.S. at 454.

For the reasons stated by the district court, it appears that Miles's appeal lacks an arguable basis in law. Accordingly, the motion to proceed in forma pauperis is **DENIED**. Unless Miles pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX-C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KUSHAWN S. MILES,

Plaintiff,

CASE NO. 1:18-CV-738

v.

HON. ROBERT J. JONKER

IONIA CORRECTIONAL FACILITY,
et al.,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 76) and Plaintiff's Objections (ECF No. 77). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. The Court finds the Magistrate

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declines to exercise supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1367(c)(3).

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 76) is **APPROVED AND ADOPTED** as the opinion of the Court.

2. The motion for summary judgment filed by Defendants Larson, Novak, Rykse, Schiebner, and Turner (ECF No. 46) is **GRANTED**.

3. Plaintiff's Motion for Summary Judgment (ECF No. 50) is **DENIED**.

4. Plaintiff's state law claims are **DISMISSED** without prejudice under 28 U.S.C. § 1367(c)(3).

5. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

Dated: March 18, 2020

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

Certified as a True Copy
By [Signature]
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 3-23-2020