UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORDER

December 8, 2020

Before

DIANE P. WOOD, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 20-2800	TIMOTHY W. ELKINS, JR., Plaintiff - Appellant v. TONY GUINN, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:17-cv-03253-JBM Central District of Illinois District Judge Joe Billy McDade	

The following is before the court: **MEMORANDUM IN SUPPORT OF PLRA MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS SUPPLEMENT,** construed as a motion to reconsider this court's order dated November 18, 2020, filed on December 3, 2020, by the pro se appellant,

IT IS ORDERED that the motion to reconsider is **DENIED**. The appellant shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

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CERTIFIED COPY

A True Copy:
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

PLRA C.R. 3(b) FINAL ORDER

January 8, 2021

No. 20-2800	TIMOTHY W. ELKINS, JR., Plaintiff - Appellant v. TONY GUINN, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:17-cv-03253-JBM
Central District of Illinois
District Judge Joe Billy McDade

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on November 18, 2020 and was given fourteen (14)days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

form name: **c7_PLRA_3bFinalOrder**(form ID: **142**)

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NOTICE OF ISSUANCE OF MANDATE

January 8, 2021

To: Shig Yasunaga
UNITED STATES DISTRICT COURT
Central District of Illinois
United States Courthouse & Federal Building
Springfield , IL 62701-0000

No. 20-2800	TIMOTHY W. ELKINS, JR., Plaintiff - Appellant v. TONY GUINN, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:17-cv-03253-JBM
Central District of Illinois
District Judge Joe Billy McDade

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

CHOOSE ONE OF THE FOLLOWING: no record to be returned

DATE OF COURT ORDER: 11/18/2020

NOTE TO COUNSEL:
If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date: **Received by:**

_____ _____

form name: **c7_Mandate**(form ID: **135**)

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Timothy W Elkins, Jr.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 17-CV-3253**
	)	
Tony Guinn, M. Mayfield, Major Traylor, Lt. Sara Johnson, Guinn, John Doe #2, John Doe #3, John Doe #4	)	
	)	
Defendants.	)	

JUDGMENT IN A CIVIL CASE

DECISION BY THE COURT. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Third Amended Complaint is dismissed with prejudice.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff recover nothing on his claims against defendants.

Dated: 5/7/2019

s/ Shig Yasunaga
Shig Yasunaga
Clerk, U.S. District Court

E-FILED
Tuesday, 07 May, 2019 11:28:04 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

TIMOTHY W. ELKINS, JR.,	)	
	)	
Plaintiff,	)	
v.	)	**No.: 17-cv-3253-JBM**
	)	
TONY GUINN, et al.,	)	
	)	
Defendants.	)	

MERIT REVIEW -THIRD AMENDED COMPLAINT

Plaintiff, proceeding pro se, files a third amended complaint alleging various violations at the Graham Correctional Center ("Graham"). The case is before the Court for a merit review pursuant to 28 U.S.C. § 1915A. In reviewing the Complaint, the Court accepts the factual allegations as true, liberally construing them in Plaintiff's favor. *Turley v. Rednour*, 729 F.3d 645, 649-51 (7th Cir. 2013). However, conclusory statements and labels are insufficient. Enough facts must be provided to "state a claim for relief that is plausible on its face." *Alexander v. United States*, 721 F.3d 418, 422 (7th Cir. 2013)(citation and internal quotation marks omitted). While the pleading standard does not require "detailed factual allegations", it requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Wilson v. Ryker*, 451 Fed. Appx. 588, 589 (7th Cir. 2011) quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff's three prior complaints were dismissed for his continued attempts to mis-join unrelated claims and for failing to provide sufficient detail of claims, particularly, those regarding his "religious rights." Plaintiff now files his fourth iteration, which does little to cure these defects.

Plaintiff asserts that on an unidentified date he pled guilty in Macoupin County case number 14-CF-183, to a charge of aggravated DUI. Plaintiff was involved in a head-on collision with another vehicle which carried Brandon Guinn, the son of Defendant Officer Guinn. Plaintiff claims that he pled guilty to the charge because, on September 29, 2017, Defendant Guinn entered his cell and threatened him and his family, "forcing" him to plead. Plaintiff does not explain how it was that he was incarcerated at Graham when he had not yet pled guilty to the DUI charge. The Court is left to conjecture that Plaintiff was imprisoned on another matter at the time of the plea.

Plaintiff further alleges that on September 15, 2017, prior to the alleged threats by Guinn, Defendant Mayfield placed him in handcuffs and took him to investigatory segregation. He claims that this was done with the approval of Defendants Traylor and Johnson. Plaintiff alleges that he was not told why he was being placed in investigatory segregation and asserts this as a due process violation. Plaintiff pleads that from September 15, 2017 to October 4, 2017, while in investigative segregation, Defendants Mayfield, Traylor and Johnson "denied plaintiff his rights to practice his religion, recreation, showers, hygiene items, phone calls...[there was a] roach infestation..[no] cleaning supplies..[no] access to legal supplies, [no] law library and [no] notary causing a appeal to not get filed on time." Plaintiff alleges that Defendants Mayfield Traylor and Johnson subjected him to these conditions in retaliation for the accident involving Defendant Guinn's son.

As to the religion claim, Plaintiff does not identify his religion or plead any facts to substantiate in what way these rights were violated. This, despite the Court's prior orders identifying this deficiency and providing instruction. Plaintiff also alleges he was denied

medical care without identifying a serious medical need, the care he needed and by whom it was denied. This, too, is something which had also been previously addressed by the Court.

Plaintiff asserts a claim against Defendant Guinn for threatening him. This, however, is barred by the application of *Heck v. Humphrey,* 512 U.S. 477 (1994). "The rule of *Heck v. Humphrey* is intended to prevent collateral attack on a criminal conviction through the vehicle of a civil suit. To this end, *Heck* bars a plaintiff from maintaining a § 1983 action in situations where 'a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence...'" *McCann v. Neilsen*, 466 F.3d 619, 621 (7th Cir. 2006). The *Heck* bar applies "until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck.* at 489. If there were a finding here that Plaintiff had been "forced" to plead guilty, this would call into question the validity of the conviction which flowed from the guilty plea. Plaintiff's claim that Defendant Guinn threatened him is *Heck*-barred and cannot proceed. If he wishes to pursue this claim, he must do so through a habeas action.

As noted, Plaintiff alleges a due process violation as he was not told the reason he was placed in investigative segregation. It has been determined, however, that it does not violate due process to hold a prisoner in administrative segregation while an investigation is undertaken or a hearing is convened. *Jacobs v. Godinez*, No. 95-7020, 1997 WL 45317, at *2 (N.D.Ill. Jan. 30, 1997) (40 days in administrative segregation did not violate due process). This is so as "[t]he Illinois prison regulations governing investigative segregation also do not confer a liberty interest on prisoners to remain free of investigation segregation." *Id. See also, Walker v. Clayton*, 730 Fed.Appx. 370, 373 (7th Cir. 2018). "No deprivation of liberty occurs when a restriction is imposed for managerial, nonpunitive reasons."

Due process may be implicated, however, if the conditions in administrative segregation represent an "atypical and significant hardship." *Lieberman v. Budz*, No. 03-2009, 2009 WL 1437609, at *10 (N.D. Ill. May 20, 2009) (internal citations omitted). *See also*, *Dixon v. Godinez,* 114 F.3d 640, 644 (7th Cir. 1997) (court to examine not just the severity, but the duration of the complained-of conditions). Here, the Court considers Plaintiff's claim that he was held three weeks without recreation, showers, hygiene items or phone calls, in a cell infested with roaches. The Court does not consider Plaintiff's religion claims or denied access to the courts due to his failure, yet again, to provide sufficient information as to these claims.

Plaintiff gives not detail as to the roach infestation. He does not indicate the prevalence or approximate number of roaches or any physical injury it caused. *See Harris v. Fleming*, 839 F.2d 1232, 1235 (7th Cir. 1988)(ten days in a segregation unit without toilet paper, toothbrush or toothpaste in a "filthy, roach-infested cell" did not constitute cruel and unusual punishment); *Caudle-El v. Peters*, 727 F.Supp. 1175, 1181 (N.D.Ill. Oct. 15, 1989) (six days without hygiene items not actionable where plaintiff did not suffer physical harm). Here, three weeks without recreation, showers, hygiene items or phone calls, along with an unknown number of roaches. fails to state a colorable conditions of confinement claim and is DISMISSED.

Plaintiff's retaliation claim against Defendants Mayfield, Traylor and Johnson also fails as Plaintiff fails to plead that he suffered retaliation for exercising a constitutionally protected right. *Pearson v. Welborn*, 471 F.3d 732, 738 (7th Cir. 2006) (internal citation omitted). Here, Plaintiff alleges that he was retaliated against for having struck one of Defendants' children in an automobile accident. Plaintiff's head-on collision with Brandon Guinn was not constitutionally protected activity subject to First Amendment protection and is DISMISSED.

IT IS THEREFORE ORDERED:

1) Plaintiff's Third Amended Complaint is dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1915A, for the reasons indicated herein. Plaintiff has been given sufficient opportunity and, despite this and the instruction of the Court, has failed to plead a cognizable claim. The complaint is DISMISSED with prejudice and this case is closed. The clerk is directed to enter a judgment pursuant to Fed. R. Civ. P. 58.

2) This dismissal shall count as one of Plaintiff's three allotted "strikes" pursuant to 28 U.S.C. Section 1915(g). The Clerk of the Court is directed to record Plaintiff's strike in the three-strike log.

3) Plaintiff must still pay the full docketing fee of $350 even though his case has been dismissed. The agency having custody of Plaintiff shall continue to make monthly payments to the Clerk of Court, as directed in the Court's prior order.

4) If Plaintiff wishes to appeal this dismissal, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a). A motion for leave to appeal in forma pauperis should set forth the issues Plaintiff plans to present on appeal. See Fed. R. App. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the $505 appellate filing fee irrespective of the outcome of the appeal.

5/7/2019
ENTERED

s/ Joe Billy McDade
JOE BILLY McDADE
UNITED STATES DISTRICT JUDGE

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

TIMOTHY W. ELKINS, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2018-L-32
	)	
TONY GUINN, SARA JOHNSON, and DANIEL TRAYLOR,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

The Defendants, TONY GUINN, SARA JOHNSON, and DANIEL TRAYLOR, by and through their attorney, Kwame Raoul, Attorney General for the State of Illinois, provide the following reply in support of their motion to dismiss Plaintiff's second amended complaint, filed pursuant to section 2-619(a)(4) of the Code of Civil Procedure:

1. On November 30, 2020, Plaintiff filed his response to Defendants' motion seeking dismissal of his second amended complaint.

2. In his response, Plaintiff cites to no case law and fails to address the elements of *res judicata*. Instead, Plaintiff attempts to distinguish this present action from the federal action that was dismissed and serves as the basis for Defendants' argument. He argues that the cases are distinct because he proceeded on different claims in the federal action.

3. Plaintiff's attempts to distinguish the claims are not entirely accurate. Plaintiff contends that the federal action against Defendant Guinn was for claims of threats and retaliation, whereas the cause of action in this matter is excessive force and the denial of medical treatment. (Pl Resp., ¶4). Plaintiff also claims that the federal case against Johnson and Traylor was for retaliation but the claim in this case is for indifference to medical needs. (Pl Resp., ¶7). But, these

claims by Plaintiff are contradicted by the third amended complaint that he filed in the federal matter, which Defendants attached to the memorandum of law in support of their motion to dismiss as Exhibit 2. The similarities between this case and the federal action are also highlighted in the dismissal order entered by Judge McDade, which sets forth the allegations as observed by the Court in that suit. (Defs' MOL, Exhibit 3). Plaintiff's claims brought in the federal action were not as discrete as he contends in opposition to Defendants' motion to dismiss.

4. Regardless, it is clear from the case law that labelling claims differently in separate actions does not negate the *res judicata* bar. *River Park, Inc. v. City of Highland Park*, 184 Ill.2d 290, 311 (1998) ("Accordingly, we hold that the same evidence test is not determinative of identity of cause of action. Instead, pursuant to the transactional analysis, separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief."); *see also Cooney v. Rossiter*, 2012 IL 113227, ¶23 (2012) (finding identity of cause of action between state and federal claims because "both suits arose from the same set of operative facts.").

5. In a supplemental filing by Plaintiff, also filed on November 30, 2020, Plaintiff argues that Defendants had "easy access to the information used to file their motion"; however, this is not true. The Defendants were not served in the federal action and, although defense counsel was aware of federal actions filed by Plaintiff in the Southern District of Illinois, defense counsel did not know about the case cited to in their motion until after March 2020.

WHEREFORE, for these reasons, Defendants request that this Court grant their motion to dismiss Plaintiff's second amended complaint, and that it dismiss the Plaintiff's complaint *with prejudice.*

Respectfully submitted,

TONY GUINN, SARA JOHNSON, and DANIEL TRAYLOR,

Defendants,

KWAME RAOUL, Attorney General,
State of Illinois,

Attorney for Defendants,

By: s/Lisa Cook
Lisa Cook
Assistant Attorney General

Lisa Cook, #6298233
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0261 Phone
(217) 782-8767 Fax
E-mail: lcook@atg.state.il.us

Timothy W. Elkins, Jr. #Y-4242 v. Tony Guinn;
Macoupin County Case No. 2018-L-32

CERTIFICATE OF SERVICE

Lisa Cook, under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true and that she has served a copy of the foregoing, *Defendants' Reply In Support of Their Motion to Dismiss Plaintiff's Amended Complaint*, via U.S. Mail, proper postage affixed, mailed at Springfield, Illinois on December 21, 2020, to the following:

Timothy Elkins, Jr., #Y24242
Dixon Correctional Center
2600 N. Brinton Avenue
Dixon, IL 61021

A copy of the above described document was e-filed this date with the Circuit Clerk's Office of Macoupin County.

s/Lisa Cook
Lisa Cook
Assistant Attorney General