

Appendix B

United States Court of Appeals
for the Fifth Circuit

No. 20-40583

MICHAEL GEOFFREY PETERS,

Plaintiff—Appellant,

versus

STATE OF TEXAS; TEXAS DEPARTMENT OF CRIMINAL JUSTICE;
SUSAN KING, *Mailroom Supervisor*; REGIONAL DIRECTOR LORIE
DAVIS; WARDEN AUDEREY ENGLAND; ANNALEAS
FRUSHAMERRITT,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:19-CV-424


ORDER:

Michael Geoffrey Peters, Texas prisoner # 2019190, filed a 42 U.S.C. § 1983 complaint, which was dismissed without prejudice for failure to prosecute, failure to obey an order of the court, and failure to effect service of process. Peters now moves for leave to proceed in forma pauperis (IFP) on appeal. In seeking authorization to proceed IFP in the present appeal, Peters argues that the three-strikes bar does not apply to actions asserting First Amendment violations.

No. 20-40583

To proceed IFP on appeal, a movant must demonstrate both financial eligibility and the existence of a nonfrivolous issue for appeal. 28 U.S.C. § 1915(a)(1); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982); *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). Also, under 28 U.S.C. § 1915(g), a movant is barred from proceeding IFP in any civil action or appeal absent a showing that he “is under imminent danger of serious physical injury.” § 1915(g); *see Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996).

The motion to supplement his IFP motion is GRANTED. Because Peters has not made the required showing, his IFP motion is DENIED. *See Carson*, 689 F.2d at 586. All other outstanding motions are DENIED. Peters has 30 days from the date of this order to pay the full appellate filing fee of \$505 fee or submit an IFP motion addressing his issues for appeal, including the issue whether § 1915(g) applies to First Amendment claims, and his financial eligibility. The clerk of this court is directed to dismiss the appeal for want of prosecution if Peters does not comply. *See 5TH CIR. R. 42.3.1.2.*



KURT D. ENGELHARDT
United States Circuit Judge

(Exhibit No. 16)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

MICHAEL PETERS	§	
v.	§	CIVIL ACTION NO. 6:19cv424
STATE OF TEXAS, ET AL.	§	

ORDER

On September 3, 2019, Plaintiff Michael Peters filed a complaint which referred to a conspiracy against him by the State of Texas, alleged thefts of his mail, a “statewide racketeering coverup,” and the conditions of confinement at the Beto Unit during the time he spent there while awaiting a court hearing in a separate lawsuit. The named Defendants are the State of Texas, the Texas Department of Criminal Justice, Hodge Unit mailroom supervisor Susan King, TDCJ-CID Director Lorie Davis, and Warden Audrey England.

Peters states that Secretary of Energy Rick Perry was involved in racketeering crimes while Governor of Texas and is now in a position to destabilize the U.S. Government at the Department of Energy. The State of Texas has thwarted all of Peters’ attempts to expose the cover-up of this racketeering enterprise and now continues this effort by stealing all of Peters’ mail warning the Government of these crimes. Peters contends that he has been silenced as part of a cover-up involving Texas Childrens Hospital and Baylor Hospital, who funded Perry’s governorship in Texas and are likely involved in the racketeering at the Department of Energy.

Although Peters maintains that he has attempted to expose these alleged wrongs, he claims that the mailroom staff at the Hodge Unit has refused to allow him to send mail to the “Prison Watch Dog Group etc.” because the mail was exposing them for tampering with his mail regarding the State’s crimes and liabilities. As a result, Peters asserts that he is being prevented from warning the Government about a potential threat to national security involving Perry. He states that he is also

being prevented from exposing the State of Texas for political, judicial, and racketeering crimes involving both Perry and the judges and courthouse staff in Montgomery County, and from warning prison watchdog groups about these cover-ups.

Peters also contends that he is being refused federal protection to safeguard his life while he exposes state-wide corruption and racketeering crimes. All of his law books have been confiscated and he has been sent to the Hodge Unit, which is for mental patients, even though he is not a mental patient.

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A review of Peters' lawsuit shows that he lacks sufficient factual specificity to show that he has the basis for a potentially meritorious civil rights lawsuit. His claim of a large-scale government conspiracy against him appears frivolous and fanciful absent some sort of substantiating facts. See Walsh v. Comey, 118 F.Supp.2d 22, 23 (D.D.C. 2015). Thus, it is by no means clear that Peters has shown constitutionally cognizable harm in the fact that he apparently has not been able to contact the CIA with regard to his claims of a racketeering conspiracy in the state and federal governments. See, e.g., Jones v. Greninger, 288 F.3d 322, 325 (5th Cir. 1999). While Peters also complains of the conditions of confinement at the Beto Unit, he does not make clear who he is suing in connection with this claim. THCS?

Peters is reminded that the term "frivolous" means that a complaint lacks an arguable basis in law or fact; a complaint is legally frivolous when it is based upon an indisputably meritless legal theory. Neitzke v. Williams, 490 U.S. 319, 325-27, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). A complaint fails to state a claim upon which relief may be granted where it does not allege sufficient facts that, taken as true, state a claim that is plausible on its face and thus does not raise a right to relief above the speculative level. Montoya v. FedEx Ground Packaging System Inc., 614 F.3d 145, 149 (5th Cir. 2010), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim has factual plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Hershey v. Energy Transfer Partners, L.P., 610 F.3d 239, 245 (5th Cir. 2010); Ashcroft v. Iqbal, 556

U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009). This plausibility standard is not akin to a probability requirement, but asks for more than a possibility that the defendant has acted unlawfully. Twombly, 550 U.S. at 556.

Although all well-pleaded facts are taken as true, the district court need not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions. Whatley v. Coffin, 496 F.App'x 414, 2012 U.S. App. LEXIS 22894, 2012 WL 5419531 (5th Cir., November 7, 2012), citing Plotkin v. IP Axxess Inc., 407 F.3d 690, 696 (5th Cir. 2005).

Instead of having his lawsuit outright dismissed, Peters should be given another opportunity to allege facts providing a basis for a civil rights lawsuit. See Eason v. Thaler, 14 F.3d 8 (5th Cir. 1994). It is accordingly

ORDERED that Peters shall have thirty (30) days from receipt of this notice to file an amended complaint stating specific facts to support his claims showing that he has a basis for a potentially meritorious civil rights lawsuit. In this repleading, Peters shall specify how and when each defendant was personally involved in the various incidents made the basis of his claims. He shall explain how his constitutional rights were violated. Failure to replead in conformity with this order may result in dismissal of the complaint. It is further

ORDERED that the Clerk shall not accept any other documents in this case, except for a motion for an extension of time, until the Plaintiff complies with this Order.

So **ORDERED** and **SIGNED** this 27th day of September, 2019.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

Appendix "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL GEOFFREY PETERS,

Plaintiff,

v.

STATE OF TEXAS, ET AL.,

Defendants.

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Case No. 6:19-CV-424-JDK-JDL

ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Michael Geoffrey Peters, an inmate proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On February 6, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 10), recommending that Plaintiff's action be dismissed against Defendants State of Texas, Texas Medical Branch, Lorie Davis, Annales Frushamertritt, Kimberly Drew, Mary Linson, Warden England, Captain Black, and Sgt. King. *Id.* at 8. Plaintiff filed objections on March 9, 2020, and March 13, 2020. Docket Nos. 12–13.

The Court overrules Plaintiff's objections. Plaintiff's only specific objection is that his pleadings crossed "the line from 'conceivable to plausible'" because his exhibits and evidence prove the existence of an illegal cover-up by Defendants. Docket No. 13 at 12–14. Plaintiff, however, does not dispute the Magistrate Judge's proper conclusions that: (1) Plaintiff's claims against the State of Texas and the Texas Medical Branch are barred by the Eleventh Amendment; (2) Plaintiff's claims that Lorie Davis intentionally transferred and controlled Plaintiff were speculative at best and conclusory; (3) Plaintiff failed to state a claim against Frushamertritt, Drew,

Appeal

and Linson because Plaintiff did not specify their personal involvement; and (4) Plaintiff's claims against Warden England, Captain Black, and Sgt. King appear in another pending lawsuit filed by Plaintiff and therefore may be dismissed without prejudice to Plaintiff's right to pursue these claims in his other case. *See, e.g., Moore v. La. Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (2014) ("Federal courts are without jurisdiction over suits against a state, a state agency, or a state official in his official capacity unless that state has waived its sovereign immunity or Congress has clearly abrogated it."); *Morales v. Horn*, No. G-05-0560, 2008 WL 4746763, at *2 n.7 (S.D. Tex. Oct. 28, 2008) (noting that the State Classification Committee "is responsible for 'reviewing and approving Institutional offenders for all inter-unit transfers'" (citation omitted)); *Murphy v. Kellar*, 950 F.2d 290, 292 (5th Cir. 1992) ("[A] plaintiff bringing a section 1983 action must specify the personal involvement of each defendant.").

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.


Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 10) be **ADOPTED**. It is further

ORDERED that Plaintiff's claims against Defendants State of Texas and Texas Medical Board are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

ORDERED that Plaintiff's claims against Defendants Lorie Davis, Annales Frushamerritt, Kimberly Drew, Mary Linson, Warden England, Captain Black, and Sgt. King are **DISMISSED**

WITHOUT PREJUDICE. The dismissal of these claims and Parties shall have no effect upon Plaintiff's claims against Defendant Susan King.

So **ORDERED** and **SIGNED** this **26th** day of **March, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE