

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

No: 21-3365

Mark Stinson

Plaintiff - Appellant

v.

John P. Yates, Warden, FCC Low; Blair, Camp Unit Manager, B.O.P.; Randle, Lieutenant, B.O.P.; Rendon, Camp Counselor, B.O.P.; B. Crawford, Officer, B.O.P.

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:21-cv-00111-DPM)

**United States Court of Appeals
For The Eighth Circuit**
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

**VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov**

December 15, 2021

Mr. Mark Stinson
FEDERAL CORRECTIONAL INSTITUTION
29908-076
P.O. Box 9000
Forrest City, AR 72336-9000

RE: 21-3365 Mark Stinson v. John Yates, et al

Dear Mr. Stinson:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Michael E. Gans
Clerk of Court

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Enclosure(s)

cc: Ms. Tammy H. Downs

District Court/Agency Case Number(s): 2:21-cv-00111-DPM

JUDGMENT

Before LOKEN, BENTON, and KELLY, 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).

The motion for leave to proceed in forma pauperis has been considered and is granted. This case is summarily affirmed in accordance with Eighth Circuit Rule 47A. The full \$505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

Appellant's motion for entry of summary disposition, motions for default judgment, motion to notify all parties to this complaint and approve order granting motion to proceed in forma pauperis, motion to amend complaint and default judgment, and motion for service are denied as moot.

December 15, 2021

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

/s/ Michael E. Gans

11

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MARK STINSON,
REG. #29908-076

PLAINTIFF

v.

2:21CV00111-DPM-JTK

JOHN P. YATES, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Chief Judge D. P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. Introduction

Plaintiff Mark Stinson is a federal inmate incarcerated at the Forrest City Low Federal Correctional Institution (FCI), who filed this federal civil rights action pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). (Doc. Nos. 1, 4)

Having reviewed Plaintiff's Amended Complaint (Doc. No. 4), the Court finds the case should be dismissed, for failure to state a claim upon which relief may be granted.

II. Screening

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Twombly, 550 U.S. at 556-7. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of entitlement to relief." Id.*

III. Facts and Analysis

Plaintiff alleged in his Amended Complaint that Defendants improperly placed him in the Special Housing Unit (SHU) for eight days on March 19, 2021, and for forty-four days on March 28, 2021. These placements were based on Plaintiff's refusal to obey orders to report to his food service job because he was previously fired from the job on two occasions, and believed that the orders to return were retaliatory. He later was transferred from the federal camp to the "low" section of the prison without a review. He alleges retaliation, cruel and unusual punishment, and denial of due process, and seeks monetary and injunctive relief.

Plaintiff has filed two prior lawsuits in which he alleged similar claims. In Stinson v. Schmidt, 2:20cv00187-BSM-JTK (E.D.Ark. 2020), he challenged his assignment to the SHU for twenty-one days without the filing of a disciplinary charge and in retaliation for a prior lawsuit. That action was dismissed for failure to state a federal claim for relief. Then, in Stinson v. Cauley, 2:21cv00033-BSM-BD (E.D.Ark. 2021), his challenge to two

assignments to the SHU as retaliatory also was dismissed for failure to state a federal claim for relief.

“A Bivens claim is a cause of action brought directly under the United States Constitution against a federal official acting in his or her individual capacity for violations of constitutionally protected rights.” Buford v. Runyon, 160 F.3d 1199, 1203, n. 6 (8th Cir. 1998). In Ziglar v. Abbasi, the United States Supreme Court held that a federal implied damages remedy applies in three circumstances: “a claim against FBI agents for handcuffing a man in his own home without a warrant; a claim against a Congressman for firing his female secretary; and a claim against prison officials for failure to treat an inmate’s asthma.” 137 S.Ct. 1843, 1860 (2017) (citing Bivens, 403 U.S. 388 (1971); Davis v. Passman, 442 U.S. 228 (1979); and Carlson v. Green, 446 U.S. 14 (1980)). The Court also stated that expanding Bivens outside those contexts is “a disfavored judicial activity.” Ziglar, 137 S.Ct. at 1857. In Hawk v. Ecoffey, an inmate alleged that federal officials violated his constitutional rights when they failed to submit the necessary documents related to his federal indictment and conviction. No. CIV. 19-5012-JLV, 2020 WL 999010 * 2 (D.S.D. 2020). The court held that the inmate appeared to challenge the validity of his conviction, and that his due process claim did not “resemble the Bivens claims approved by the Supreme Court.” (Id.) In addition, in Gordon v. Cain, the Court held that Ziglar precluded a federal inmate’s First Amendment retaliation claim in a Bivens action. No. 2:17cv00194-JJV, 2018 WL 10075598 (E.D.AR.

2018).

In light of this case law, the Court finds that Plaintiff's retaliation claim fails to state a claim upon which relief may be granted. See Gonzalez v. Bendt, No. 4:16-CV-04038-KES, 2018 WL 1524752, at *4 (D.S.D. 2018), aff'd 971 F.3d 742 (8th Cir. 2020), where the Court stated, "the cost, time, and energy associated with defending a Bivens action brought by an inmate for an action based on retaliation under the First Amendment against a federal employee are significant. The court . . . declines to find a Bivens remedy for an inmate alleging retaliation under the First Amendment against a federal official."

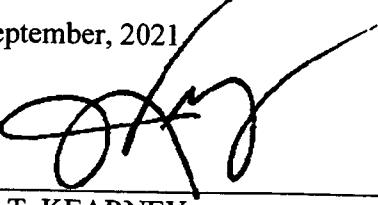
In addition, to state a Fourteenth Amendment due process claim, Plaintiff must "demonstrate that he was deprived of life, liberty or property by government action." Phillips v. Norris, 320 F.3d 844, 846 (8th Cir. 2003). Plaintiff did not allege any specific facts concerning his restrictions in the SHU or identify the deprivation of a liberty interest to support his due process challenge to his placement or his transfer to a higher-security level of incarceration. Sandin v. Conner, 515 U.S. 472, 484 (1995). A prisoner has no liberty interest in having certain procedures followed in the disciplinary process; rather, the liberty interest arises from the "nature of the prisoner's confinement." Phillips, 320 F.3d at 847. "In order to determine whether an inmate possesses a liberty interest, we compare the conditions to which the inmate was exposed in segregation with those he or she could 'expect to experience as an ordinary incident of prison life.'" Phillips, 320 F.3d at 847 (quoting Beverati v. Smith, 120 F.3d 500, 503 (4th Cir. 1997)).

IV. Conclusion

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's Amended Complaint against Defendants be DISMISSED without prejudice, for failure to state a claim upon which relief may be granted.
2. Dismissal of this action constitute a "strike" within the meaning of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g).¹
3. The Court certify that an in forma pauperis appeal from an Order and Judgment dismissing this action would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

IT IS SO RECOMMENDED this 3rd day of September, 2021



JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE

¹The statute provides that a prisoner may not file an in forma pauperis civil rights action or appeal if the prisoner has, on three or more prior occasions, filed an action or appeal that was dismissed as frivolous, malicious or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. See also Patton v. Jefferson Correctional Center, 136 F.3d 458, 462-64 (5th Cir. 1998), where the Court held that a complaint construed as stating both habeas and section 1983 claims which was dismissed as frivolous and for failure to exhaust state court remedies, could be considered a "strike" within the meaning of the PLRA.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MARK STINSON
REG #29908-076

PLAINTIFF

v.

No. 2:21-cv-111-DPM

JOHN P YATES, Warden, FCC Low;
BLAIR, Camp Unit Manager, B.O.P.;
RANDLE, Lieutenant, B.O.P. ;
RENDON, Camp Counselor, B.O.P.; and
B. CRAWFORD, Officer, B.O.P.

Appeal

DEFENDANTS

ORDER

The Court entered Judgment in September 2021 and the Court of Appeals affirmed the Judgment in December 2021. Stinson's motion for reconsideration, *Doc. 44*, has no merit and is denied. FED. R. CIV. P. 59(e).

So Ordered.

W.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

28 February 2022

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MARK STINSON
Reg. #29908-076

PLAINTIFF

v.

No. 2:21-cv-111-DPM

JOHN P. YATES, Warden;
BLAIR, Camp Unit Manager, B.O.P.;
RANDLE, Lieutenant, B.O.P.;
RENDON, Camp Counselor, B.O.P.; and
B. CRAWFORD, Officer, B.O.P.

DEFENDANTS

ORDER

1. Motions, *Doc. 7 & 8*, denied as moot. Magistrate Judge Kearney already granted Stinson leave to proceed *in forma pauperis*, *Doc. 6*; and this case is already styled as Stinson requests in his motion to amend. *Doc. 8*.
2. On *de novo* review, the Court adopts Magistrate Judge Kearney's recommendation, *Doc. 5*, and overrules Stinson's objections, *Doc. 9*. FED. R. CIV. P. 72(b)(3). Although the United States Court of Appeals for the Eighth Circuit hasn't addressed the issue, several Courts have declined to extend *Bivens* to First Amendment retaliation claims. *Butler v. S. Porter*, 999 F.3d 287, 295 (5th Cir. 2021) (collecting cases). This Court agrees. Further, Stinson's claim about his time in the SHU doesn't show the type of "atypical and significant hardship"

required to state a due process claim. Stinson's complaint will therefore be dismissed without prejudice for failure to state a claim. The Court recommends that this dismissal count as a "strike" for purposes of 28 U.S.C. § 1915(g). An *in forma pauperis* appeal from this Order and accompanying Judgment would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

23 September 2021

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MARK STINSON
Reg. #29908-076

PLAINTIFF

v.

No. 2:21-cv-111-DPM

JOHN P. YATES, Warden;
BLAIR, Camp Unit Manager, B.O.P.;
RANDLE, Lieutenant, B.O.P.;
RENDON, Camp Counselor, B.O.P.; and
B. CRAWFORD, Officer, B.O.P.

DEFENDANTS

JUDGMENT

Stinson's complaint is dismissed without prejudice.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

23 September 2021

228

TRULINCS 29908076 - STINSON, MARK - Unit: FOR-D-S

FROM: 29908076
TO: Camp Administrator
SUBJECT: ***Request to Staff*** STINSON, MARK, Reg# 29908076, FOR-D-S
DATE: 03/28/2021 11:44:42 AM

To: Warden, unit manager
Inmate Work Assignment: none

i would like to report harassment from office K. Cauley, i was fired from food service in Aug 2019, on my off day, for no reason. i was again fired in Nov 2020, Cauley cursed me out, screaming at the top of his lungs, call me out my name (greedy so-in-so) and told me to get out off the warehouse and don't come back over some oranges, in front of Mrs. Barkley and Mrs. Rice. now he wants me to work back in the kitchen for more abuse. then sent me to the SHU for not going to work on an assignment that has not started yet. i feel like i am being harassed. is this policy? going to the SHU for 8 days, for not working an assignment that has not started?

AFFIDAVIT OF MARK STINSON

Reg #29908-076

April 8, 2022

KNOW ALL MEN BY THESE PRESENTS:

That I Mark Stinson, the Plaintiff in the legal Civil Case style Mark Stinson V. John P. Yates, ET AL., Case Number 2:21CV00111-DPM-JTK, Appeals No. 21-3365, denied, Civil Rights Complaint.

1. That the Plaintiff is requesting relief for Case No. 21-3365, in the amount of Thirty Million Dollars (\$30,000,000.00) immediately, for malicious loss of liberty, mental stress, cruel and unusual punishment, due process violation, disproportionate to the offense, fundamentally unfairness, excessive administrative segregation, as discipline without due process and malicious imminent increased danger.
2. That Defendants violated the plaintiff's First, Fifth and Eighth Amendment Rights.
3. That this affidavit is made in the interest of justice and is not meant to delay the proceeding and made in good faith.
4. That this statement is giving pursuant to title 28 U.S.C. § 1746.



Mark Stinson
Reg #29908-076

24

20

Appendix D

DEFENDANT: MARK STINSON
CASE NUMBER: 2:16-CR-20247-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

51 Months - counts 1-12 (counts 1-12 concurrent) (counts 1-12 consecutive to count 13)
24 Months - count 13

The court makes the following recommendations to the Bureau of Prisons:

Serve sentence in or close to Memphis, TN.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

25
686
84

Appendix E

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

No: 21-3365

Mark Stinson

Appellant

v.

John P. Yates, Warden, FCC Low, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:21-cv-00111-DPM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 08, 2022

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

/s/ Michael E. Gans

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

No: 21-3365

Mark Stinson

Appellant

v.

John P. Yates, Warden, FCC Low, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:21-cv-00111-DPM)

MANDATE

In accordance with the judgment of 12/15/2021, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

February 15, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit