

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 21-3907

Chad M. Vice

Plaintiff - Appellant

v.

City of Fort Madison, Iowa; Fort Madison Police Department; John Does, Officers; Lee County Sheriff Department; Lee County Correctional Center; John Does

Defendants - Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cv-00354-RGE)

JUDGMENT

Before COLLTON, GRUENDER, and SHEPHERD, Circuit Judges.

The motion to proceed on appeal in forma pauperis has been considered and is granted.

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.

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 appointment of counsel is denied as moot.

February 02, 2022

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

/s/ Michael E. Gans

Appendix *13*

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

No: 21-3907

Chad M. Vice

Appellant

v.

City of Fort Madison, Iowa, et al.

Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cv-00354-RGE)

ORDER

The petition for rehearing by the panel is denied.

March 16, 2022

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

/s/ Michael E. Gans

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHAD MICHAEL VICE,

Plaintiff,

v.

CITY OF FORT MADISON, FORT
MADISON POLICE DEPARTMENT, FORT
MADISON POLICE OFFICER JOHN DOE,
LEE COUNTY SHERIFF, LEE COUNTY
CORRECTIONAL CENTER, STACEY
WEBER, JOHN CANIDA, DUSTY YOUNG,
and LEE COUNTY CORRECTIONAL
CENTER OFFICER JOHN DOE,

Defendants.

No. 4:21-cv-00354-RGE-SHL

INITIAL REVIEW ORDER

Plaintiff Chad Michael Vice brings this complaint without the assistance of counsel under 42 U.S.C. §§ 1983, 1985. ECF No. 1. Jurisdiction is predicated on 28 U.S.C. §§ 1331(1), 1333. *Id.* He applies to proceed in forma pauperis. ECF No. 2. Vice also seeks appointment of counsel. ECF No. 3.

I. INITIAL REVIEW STANDARDS

The Prison Litigation Reform Act requires federal courts to review all prisoner complaints filed against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). On review, the Court must identify the cognizable claims or dismiss the complaint, or any part of it, that it determines a) is frivolous or malicious, b) fails to state a claim upon which relief may be granted, or c) seeks monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b).

A claim is “frivolous” if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be

granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The plausibility standard requires a plaintiff to show at the pleading stage that success on the merits is more than a ‘sheer possibility.’” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

A pro se complaint “must be held to ‘less stringent standards than formal pleading drafted by lawyers.’” *Rinehart v. Weitzell*, 964 F.3d 684, 687 (8th Cir. 2020) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam)). The Court must weigh all factual allegations in favor of the plaintiff unless the facts alleged are clearly baseless. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (determining what is “clearly baseless” is left to discretion of the court ruling on in forma pauperis petition). Although Federal Rule of Civil Procedure 8(a)(2) does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citation omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678–79 (citations omitted).

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted). A complaint states a plausible claim for relief when its “factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

II. DISCUSSION OF CLAIMS

Vice is currently incarcerated at the Anamosa State Penitentiary. ECF No. 1 at 24. The events giving rise to his claim, however, arose while he was in Lee County, Iowa.¹ *Id.* at 4.

Vice alleges he was in the custody of the Fort Madison Police Department in March 2017. *Id.* at 6. At the time, he was unconscious and waiting to have a chest x-ray at the Fort Madison Hospitals and Clinics. *Id.* Vice alleges one of the officers lifted Vice for the x-ray and held him in a chokehold. *Id.* at 7. As this was happening, Vice regained consciousness and found his feet dangling beneath him while he struggled to breathe. *Id.* Vice alleges this was an unnecessary and unreasonable use of force. *Id.*

Vice was later transferred to the custody of the Lee County Correctional Center. *Id.* at 8. After reporting the incident during intake, Vice states he “was immediately placed in a full-Nelson restraint” by Defendant Dusty Young. *Id.* at 9. A Lee County staff member pushed them all into a wall with Vice’s head and neck absorbing the impact of the force and causing substantial harm to Vice. *Id.* Defendants continued to be callously indifferent to Vice. *Id.* Later, Young told Vice that Young “caused injury to [Vice’s] neck and per policy [Young] could do it again,” and “retaliated against Vice in the form of disciplinary write-ups.” *Id.* at 10. Vice alleges Defendants also conspired to deny him his constitutional rights in violation of 42 U.S.C. § 1985 *Id.* at 19.

“[T]he state statute of limitations for personal injury torts [is] the appropriate period of limitations of all § 1983 cases.” *DeVries v. Driesen*, 766 F.3d 922, 923 (8th Cir. 2014) (citing *Wilson v. Garcia*, 471 U.S. 261, 276 (1985)). This is also true for cases brought under § 1985. See *Kaster v. Iowa*, 975 F.2d 1381, 1382 (8th Cir. 1992) (per curiam) (applying Iowa’s personal

¹ Vice acknowledges he presented these same claims in a suit previously dismissed without prejudice for failure to prosecute his case. See *Vice v. Lee Cnty.*, No. 4:19-cv-00071-JAJ-SBJ (S.D. Iowa May 6, 2019). ECF No. 1 at 26.

injury statute to § 1985 claims).

The Iowa Code provides a limitation period of two years for personal injury claims. Iowa Code § 614.1(2); *see also Wycoff v. Menke*, 773 F.2d 983, 984–85 (8th Cir. 1985) (holding Iowa's two-year personal injury statute of limitations applies to a § 1983 action). Vice does not allege any defendant took any specific action or inaction in the past two years to violate Vice's constitutional rights. Thus, any events from 2017 which gave rise to Vice's claims here are barred by the statute of limitations, and must be dismissed.

III. SUMMARY AND CONCLUSION

For the reasons given above, Vice's claims "lack[] an arguable basis either in law or in fact," *Neitzke*, 490 U.S. at 325, and are dismissed.

IT IS ORDERED that Plaintiff Chad Michael Vice's application to proceed without prepayment of fees, ECF No. 2, is **GRANTED**. Based on the information submitted, the Court assesses Vice no initial partial filing fee with the remainder of the \$350.00 filing fee to be paid to the Clerk of Court from his prison account in accordance with 28 U.S.C. § 1915(b). Because Vice has been granted leave to proceed without prepayment of fees, he is not required to pay the \$52.00 administrative fee. A notice of this obligation shall be sent to the appropriate prison official.

IT IS FURTHER ORDERED that Plaintiff Chad Michael Vice's motion for the appointment of counsel, ECF No. 3, is **DENIED** as moot.

IT IS FURTHER ORDERED that the complaint is **DISMISSED**. *See* 28 U.S.C. § 1915A(b) (court shall dismiss complaint on initial review if complaint is frivolous, malicious, fails to state claim or seeks monetary relief from defendant who is immune).

IT IS SO ORDERED.

Dated this 23rd day of November, 2021.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION.

CHAD M. VICE,

Plaintiff,

v.

LEE COUNTY; LEE COUNTY
CORRECTIONS; CORRECTIONS
OFFICERS,

Defendants.

No. 4:19-cv-00071-JAJ-SBJ

ORDER

On May 6, 2019, the Court dismissed this pro se complaint because Vice failed to submit an amended complaint or appropriate financial information. ECF No. 12. The order was returned as undeliverable on May 14, 2019.

Before the Court are multiple letters and motions from Vice which all seek to vacate the order dismissing the case. Vice alleges the Lee County Jail never forwarded any mail to him. ECF No. 14 at 1; *see also* ECF No. 17 1-2. He also alleges he was not able to have any of his legal paperwork in his cell with him and did not know the case number for this lawsuit. ECF No. 14 at 2. He states since his last filing, he has a confession from one of the officers who admits to assaulting him. *Id.* at 3. He also states he continues to be assaulted by jail staff. *Id.* at 3-4. However, Vice also states he is currently incarcerated at the Fort Dodge Correctional Facility. ECF No. 18 at 5.

Pro se parties are responsible for informing the Court of changes in contact information. LR 11(f). It was Vice's responsibility to update the Court that he had been moved and was no

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EIGHTH CIRCUIT

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Appendix E

longer at the Lee County Jail. Vice was assessed no filing fee, and the case was dismissed without prejudice to Vice filing a new complaint if appropriate.

The case will remain closed. His requests for counsel, ECF Nos. 15 and 24 are denied. His motions for leave to proceed in forma pauperis, ECF No. 16 and 23, are denied. The motion to vacate the Court's order of dismissal, ECF No. 18, is denied. The motion to stay, ECF No. 19, is denied as moot. The motions to produce and preserve evidence, ECF No. 21 and motion for declaratory judgment, ECF No. 22, are denied as moot. The motions for court ordered expert witnesses, ECF No. 25, is denied as moot. The motion for U.S. Marshal Service to serve summons and complaint, ECF No. 26, is denied as moot.

IT IS SO ORDERED.

DATED this 3rd day of September, 2019.


JOHN A. MARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

8CVCAP

IN THE IOWA DISTRICT COURT IN AND FOR LEE COUNTY

CHAD MICHAEL VICE,

Plaintiff

08562 CVEQ007055

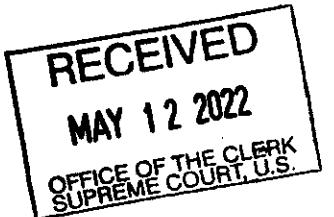
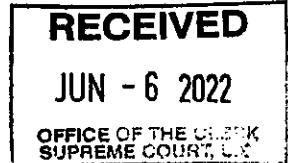
STACY WEBER
JOHN CANIDA
DUSTY YOUNG
JOHN DOE**NOTICE OF INTENT TO
DISMISS WITHOUT PREJUDICE**

Defendants

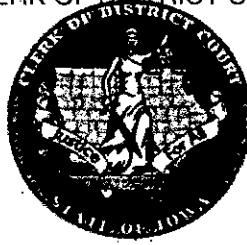
Nearly two years ago, the court granted Plaintiff the right to proceed in forma pauperis in this suit, provided he complied with Chapter 610A, which governs civil lawsuits filed by inmates. In the ensuing 22 months, Plaintiff has not filed a Petition. Notwithstanding notice from the court on at least two occasions, he has failed to file a Petition.

Recently, he filed a request for more time to file a Petition. Perhaps this was filed in anticipation of a court order giving notice of intent to dismiss. This case cannot linger without action for an indefinite period. Plaintiff has paid 20% of the filing fee but has not made the required 10 percent monthly payments thereafter.

Under the existing record, the court notifies the Plaintiff that the court intends to dismiss this case without prejudice on December 03 at 8:00 a.m. unless a Petition has been filed AND the Plaintiff has complied with the payment of fees and costs as required by court order. See Iowa Code section 610A.1(d) (stating the court may dismiss the action for failure to pay fees and costs ordered under Chapter 610A).. CLERK TO CALENDAR THIS CASE FOR FILE REVIEW ON DECEMBER 03 AT 8:00 A.M.



Appendix A



State of Iowa Courts

Case Number

CVEQ007055

Type:**Case Title**CHAD VICE VS LEE CO SHERIFF ET AL
OTHER ORDER

So Ordered

A handwritten signature in cursive script, appearing to read "Michael J. Schilling".

Michael J. Schilling, District Court Judge,
Eighth Judicial District of Iowa

Electronically signed on 2021-10-05 11:20:54