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Cause No. _____

**In The
Supreme Court of the United States**

Lonnie Kade Welsh,

Petitioner

versus

Marsha McLane Director of Texas Civil Commitment Office, Chris Greenwalt
Texas Civil Commitment Office Case, Kevin Stitt Governor State of Oklahoma is

Respondents

PETITION FOR A WRIT OF CERTIORARI

Appendix A: United States Court of Appeals for the Fifth Circuit Lonnie Kade
Welsh v. Marsha McLane Cause No. 21-50284 Decided 1-15-21.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 31, 2022

Lyle W. Cayce
Clerk

No. 21-50284
Summary Calendar

LONNIE KADE WELSH,

Plaintiff—Appellant,

versus

MARSHA McLANE, *Director of Texas Civil Commitment Office*; CHRIS GREENWALD, *Case Manager of the Texas Civil Commitment Office*; KEVIN STITT, *Governor of Oklahoma*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-906

Before WIENER, DENNIS, and HAYNES, *Circuit Judges*.

PER CURIAM:*

Lonnie Kade Welsh, an individual who was civilly committed by Texas as a sexually violent predator, appeals the district court's dismissal of his claims under 42 U.S.C. § 1983 challenging the denial of his request for a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50284

transfer to a treatment facility in Oklahoma and the denial of his postjudgment motion. We review the denial of Welsh's postjudgment motion for abuse of discretion, *see Alexander v. Wells Fargo Bank, N.A.*, 867 F.3d 593, 597 (5th Cir. 2017), and the dismissal of his complaint under 28 U.S.C. § 1915(e)(2)(B) de novo. *See Green v. Atkinson*, 623 F.3d 278, 279 (5th Cir. 2010); *see also Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005).

Welsh contends that his Fourteenth Amendment rights to liberty and interstate travel were violated when his transfer to Oklahoma was denied and that the sole remedy he seeks is a transfer to Oklahoma for medical and personal security reasons. These claims were properly brought under § 1983, rather than in a habeas petition, *see, e.g., Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005), but were properly dismissed under § 1915(e)(2)(B).

"While such civilly committed persons are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish, the Constitution nevertheless affords a state wide latitude in crafting a civil commitment scheme." *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018) (internal quotation marks and citation omitted). States may civilly commit sexually violent predators who "require the state's supervision and treatment," *id.*, and due process requires only "that the conditions and duration of confinement . . . bear some reasonable relation to the purpose for which persons are committed," *Seling v. Young*, 531 U.S. 250, 265 (2001). Welsh has not sufficiently alleged how the denial of a transfer lacked a reasonable relation to the purpose for which he was committed. *See id.*

And while "[t]he right of interstate travel has repeatedly been recognized as a basic constitutional freedom," *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 254 (1974), and "a right secured by the 14th Amendment and by other provisions of the Constitution," *Williams v. Fears*, 179 U.S. 270,

No. 21-50284

274 (1900), Welsh is currently an involuntarily committed sexually violent predator housed in a total confinement civil commitment facility. He does not presently enjoy the same freedoms as those not so restrained, including the ability to travel interstate. *See, e.g., Jones v. Helms*, 452 U.S. 412, 419 (1981).

AFFIRMED.

Cause No. _____

**In The
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Lonnie Kade Welsh,

Petitioner

versus

Marsha McLane Director of Texas Civil Commitment Office, Chris Greenwalt
Texas Civil Commitment Office Case, Kevin Stitt Governor State of Oklahoma is

Respondents

PETITION FOR A WRIT OF CERTIORARI

Appendix B: United States Court of Appeals for the Fifth Circuit En Banc
Rehearing denied Lonnie Kade Welsh v. Marsha McLane Cause No. 21-50284
Decided 7-5-2022.

**United States Court of Appeals
for the Fifth Circuit**

No. 21-50284

LONNIE KADE WELSH,

Plaintiff—Appellant,

versus

MARSHA McLANE, *Director of Texas Civil Commitment Office*; CHRIS GREENWALD, *Case Manager of the Texas Civil Commitment Office*; KEVIN STITT, *Governor of Oklahoma*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-906

ON PETITION FOR REHEARING EN BANC

Before WIENER, DENNIS, and HAYNES, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

Cause No. _____

**In The
Supreme Court of the United States**

Lonnie Kade Welsh,

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versus

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PETITION FOR A WRIT OF CERTIORARI

Appendix C: Federal Constitution's Article IV, § 2, cl 1,

Privileges and immunities of Citizens. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LONNIE KADE WELSH,

Plaintiff,

v.

MARSHA MCLANE, CHRIS GREENWALD,
AND KEVIN STITT, *Governor of Kansas*,

Defendants.

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1:20-cv-906-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Andrew Austin concerning Plaintiff Lonnie Kade Welsh's ("Welsh") complaint brought under 42 U.S.C. § 1983, (Compl., Dkt. 1), pursuant to 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. (R. & R., Dkt. 5). In his report and recommendation, Judge Austin recommends dismissing Welsh's complaint without prejudice. (*Id.* at 6). Welsh timely filed objections to the report and recommendation. (Objs., Dkt.8).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. 28 U.S.C. § 636(b). Because Welsh timely objected to each portion of the report and recommendation, the Court reviews the report and recommendation de novo. Having done so, the Court overrules Welsh's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Andrew Austin, (Dkt. 5), is **ADOPTED**. Welsh's complaint (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.

The Court will enter final judgment in a separate order.

SIGNED on January 15, 2021.

A handwritten signature in black ink, appearing to read "R. Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LONNIE KADE WELSH,

Plaintiff,

v.

**MARSHA MCLANE, CHRIS
GREENWALD, and KEVIN STITT,
Governor of Oklahoma,**

Defendants.

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A-20-CV-906-RP

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

The Magistrate Judge submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b) and Rule 1(e) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrates Judges.

Before the Court is the 42 U.S.C. § 1983 complaint filed by Plaintiff Lonnie Kade Welsh. Welsh has been granted leave to proceed in forma pauperis. Welsh names Marsha McLane, Director of the Texas Civil Commitment Office (TCCO), Chris Greenwald, TCCO case manager, and Kevin Stitt, Governor of Oklahoma, as defendants. (ECF Nos. 1-2.) Upon review, the Court concludes Welsh's complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. Statement of the Case

Since 2015, Welsh has been involuntarily civilly-committed as a Sexually Violent Predator (SVP) and is in custody at the Texas Civil Commitment Center (TCCC) in Littlefield, Texas. In his complaint, Welsh alleges he is no closer to release from civil commitment today than he was in 2015. He states his sister lives in Tulsa, Oklahoma and that he had petitioned Defendant Greenwald for a transfer to a civil commitment facility in Tulsa, Oklahoma to be nearer to his sister, but Defendant McLane refused his request. Welsh further alleges that, through Defendant McLane's policies, the State of Texas has denied him access to his personal property, denied him the right to acquire new property, denied him his right to communicate with others, and that he has been repeatedly beaten and chained up. Welsh also alleges he has been "consistently placed into punitive isolations for weeks and months at a time"; and that he is in constant fear for his physical safety due to the "draconian" conditions of confinement at TCCC.

Welsh claims that, under the Fourteenth Amendment's Privileges and Immunities Clause, he has a right to leave Texas and move to Oklahoma. He further claims that McLane and Greenwald have violated his Fourteenth Amendment rights to personal security and health, and have stripped him of the rights and privileges of his United States citizenship by virtue of his class status. He seeks to have this Court enjoin McLane and Greenwald and declare his "right to egress" from Texas to Oklahoma; he also seeks an order requiring that Defendant Stitts civilly-commit Welsh to a mental-health facility near Tulsa, Oklahoma. (ECF No. 1.)

II. Discussion & Analysis

An in forma pauperis proceeding may be dismissed *sua sponte* under 28 U.S.C. § 1915(e) if the Court determines the complaint is frivolous, malicious, fails to state a claim upon which

relief may be granted or seeks monetary relief against a defendant who is immune from suit. A dismissal for frivolousness or maliciousness may occur at any time, before or after service of process and before or after the defendant's answer. *Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986). In evaluating whether a complaint fails to state a claim under § 1915(e)(2)(B), this Court applies the same standards governing dismissals pursuant to Federal Rule of Civil Procedure 12(b)(6). *See DeMoss v. Crain*, 636 F.3d 145, 152 (5th Cir. 2011). To avoid dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56, 570 (2007)).

When reviewing a plaintiff's complaint, the court must construe the plaintiff's allegations as liberally as possible. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, a plaintiff's pro se status does not offer him "an impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation and abuse already overloaded court dockets." *Ferguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986).

Plaintiff's complaint appears aimed solely at securing his release from TCCC via a court-ordered transfer to a mental-health facility in Tulsa, Oklahoma. To this end, Welsh alleges that Defendant McLane has enacted policies that violate his constitutional rights by infringing on his ability to retain and acquire personal property, by not allowing him to communicate with individuals outside of TCCC and by physically punishing him and treating him to "draconian" conditions of confinement. Because the only relief he seeks is a court-ordered transfer from Texas to Oklahoma, the Court interprets his claims regarding his property, communication, and

conditions of confinement as Welsh's effort to bolster his argument that his confinement at TCCC is objectively unreasonable and he is therefore entitled to a transfer to Oklahoma.

Welsh cites no legal authority to support his claim that this Court has the authority to grant the relief he seeks. Certainly, as one civilly committed, Welsh is entitled to greater protections than convicted prisoners who do not have a liberty interest in prison transfers. *See Meachum v. Fano*, 427 U.S. 215, 225 (1976). Nonetheless, Welsh identifies no statute or case law suggesting that, unlike prisoners, courts have recognized such a right for civil committees. To the extent Welsh is challenging the fact or duration of his commitment at TCCC, that claim is only cognizable in a petition for writ of habeas corpus, not a § 1983 action. *See Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). As it stands, Welsh's request fails to state a claim upon which relief can be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (only a complaint that states a plausible claim for relief survives a motion to dismiss.)

As to Welsh's allegations that McLane has unconstitutionally seized his personal property and will not permit him to acquire new property, he fails to plead any facts which would allow this Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 ("threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"); *Zinerman v. Burch*, 494 U.S. 113, 125 (1990) (under the Fourteenth Amendment, the intentional deprivation of property only becomes a potential constitutional violation if and when the State fails to provide due process) (citing *Parratt v. Taylor*, 451 U.S. 527, 537 (1981)); *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994) (even an intentional deprivation made without regard to the proper procedural regulations would not violate procedural

due process if the state furnished an adequate post-deprivation remedy; in Texas, the tort of conversion fulfills this requirement).

Welsh also alleges that McLane's policies prohibit him from communicating with "others that he wishes." As a civil committee, Welsh retains his First Amendment rights but these rights are subject to restrictions "so long as [the restrictions] advance the state's interest in security, order, and rehabilitation." *Bohannon v. Doe*, 527 F. App'x 283, 294 (5th Cir. 2013) (citing *Ahlers v. Rabinowitz*, 684 F.3d 53, 64 (2d. Cir. 2012)). Again, Welsh offers only conclusory statements and fails to plead facts describing how Defendants have violated his First Amendment rights. Welsh also alleges his confinement at TCCC violates the Fourteenth Amendment's Equal Protection clause and that the conditions at TCCC are "draconian." Apart from these conclusory statements, Welsh fails to allege any facts that would allow the Court to draw the inference that the Defendants are liable for any misconduct. *See Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018) (due process requires conditions of confinement at SVP facility bear a reasonable relation to "Texas's twin goals of 'long term supervision and treatment of sexually violent predators'") (citation omitted); *Wheeler v. Miller*, 168 F.3d 241, 242 (5th Cir. 1999) (equal protection claim requires proof that similarly situated individuals were treated differently).

Welsh's allegations that "the State has repeatedly beaten him and chained him" at TCCC and that he "is in constant fear for his physical safety as the state has abused him physically and mentally by the consistent use of force" might, with more detail, state a legally-cognizable claim. However, as noted above, Welsh has failed to show he has any right to the only relief he seeks, i.e. release from TCCC and transfer to a mental-health facility in Oklahoma. Further, he fails to allege that any of the named defendants were personally involved in these events. *See Thompson v. Steele*,

709 F.2d 381, 382 (5th Cir. 1983) (“Personal involvement is an essential element of a civil rights cause of action”) As a result, this claim also fails as a matter of law.

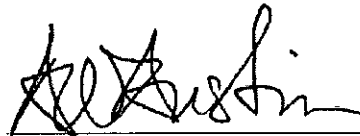
III. Recommendation

The undersigned recommends the Court **DISMISS WITHOUT PREJUDICE** this complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

IV. Objections

Within 14 days after receipt of the magistrate judge’s report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). Failure to file written objections to the proposed findings and recommendations contained within this report within 14 days after service shall bar an aggrieved party from de novo review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).

SIGNED this 9th day of December, 2020.

A handwritten signature in black ink, appearing to read "Andrew W. Austin", written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE

Cause No. _____

**In The
Supreme Court of the United States**

Lonnie Kade Welsh,

Petitioner

versus

Marsha McLane Director of Texas Civil Commitment Office, Chris Greenwalt
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Appendix D: Federal Constitution Fourteenth Amendment § 1

Sec. 1... All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.