United States Court of Appeals for the Fifth Circuit

No. 22-40364

United States Court of Appeals
Fifth Circuit
FILED
August 31, 2022
Lyle W. Cayce
Clerk

ALEX ADAMS,

Plaintiff—Appellant,

versus

BOBBY LUMPKIN; UNKNOWN DEFOOR; ANTHONY GORDON; UNKNOWN OSEYA,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:21-CV-196

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of August 31, 2022, for want of prosecution. The appellant failed to timely pay docketing fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: _____
Shawn D. Henderson, Deputy Clerk
ENTERED AT THE DIRECTION OF THE COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00196

Alex Adams,
Plaintiff,
v.
Bobby Lumpkin et al.,
Defendants.

ORDER

The court dismissed this case for failure to state a claim for which relief could be granted, over the plaintiff's objection, on January 21, 2022. Doc. 36. The court denied relief under Rule 59(e) of the Federal Rules of Civil Procedure on February 9, 2022, and denied relief under Rule 60 on April 6, 2022. Docs. 39, 46. The plaintiff has now filed two more motions (ostensibly in this and nine other cases, open and closed) in which he seeks a variety of assorted relief including, *inter alia*, appointment of counsel, criminal charges, a protective order, summary judgment, and the presentation of evidence. Docs. 50, 51.

These motions do not comply with Rule 7(b) of the Federal Rules of Civil Procedure. That rule requires that motions must state the relief sought and "state with particularity the grounds" for seeking such relief. Fed. R. Civ. P. 7(b)(1). It also provides that "rules governing captions and other matters of form in pleadings apply to motions." Fed. R. Civ. P. 7(b)(2). Those rules, in turn, require that post-complaint filings bear "a title [and] a file number" and name "the first party on each side," with a general reference to other parties, and that submissions be "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1) and 10(a). The captions of the plaintiff's pending motions list individuals who are not parties to this suit, and the only reference to the matter number for this case is in a list of ten cases. Moreover, these shotgun-type filings do not state with particularity any grounds

for relief in this case nor are they simple, concise, or direct. Although the court construes pro se filings liberally, it is not obligated to comb through these omnibus motions to determine if any of them are pertinent to this case.

This case is closed, and these motions do not raise any basis to reopen it. Because there are no pending claims before the court in this matter, all forms of relief sought in these motions are moot. The motions (Docs. 50, 51) are, therefore, denied. The clerk is directed to accept no further filings in this matter from Mr. Adams except as may be related to any appeal to the court of appeals.

So ordered by the court on May 24, 2022.

J. CAMPBELL BARKER
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00196

Alex Adams,
Plaintiff,
v.
Bobby Lumpkin et al.,
Defendants.

FINAL JUDGMENT

The court, having considered plaintiff's action, hereby enters judgment that all claims in the matter are dismissed with prejudice. Any pending motions are denied as moot. The clerk of court is directed to close this case.

So ordered by the court on January 21, 2022.

J. CAMPBELL BARKER
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ALEX ADAMS #1181239	§	
VS.	§	CIVIL ACTION NO. 6:21cv196
BOBBY LUMPKIN, et al.	§	

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Alex Adams, a prisoner of the Texas Department of Criminal Justice (TDCJ) proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights in the Coffield Unit of the Texas Department of Criminal Justice (TDCJ). The case was referred to the undersigned for findings of fact, conclusions of law, and recommendations for the disposition of the case.

I. Procedural History and Plaintiff's Allegations

Plaintiff filed his original complaint on May 20, 2021. (Dkt. #1.) On May 24, 2021, the Court observed that the complaint suffered from several deficiencies and ordered Plaintiff to file an amended complaint, which he did on June 7, 2021. (Dkt. ##6, 7.) Plaintiff thereafter filed multiple motions to amend and to present exhibits, all of which the Court construed as a motion to file a second amended complaint, which it granted on September 15, 2021. (Dkt. ##13, 15–16, 19.) The Court denied yet another motion to present exhibits as moot on October 22, 2021, and observed that Plaintiff's second amended complaint, to which he could attach any necessary exhibits, was due on October 27, 2021. (Dkt. ## 26, 28.) Plaintiff never filed a second amended complaint, and the time permitted for him to do so has long expired. Accordingly, the Court proceeds to screen the amended complaint pursuant to 28 U.S.C. §§ 1915A(b) and 1915(e)(2)(b).

In his amended complaint, Plaintiff complains primarily about having been stabbed by a fellow inmate on May 12, 2021. (Dkt. #7 at 4.) Specifically, while Plaintiff was being moved from one location to another inside the prison in handcuffs, another inmate—Anthony Gordon—was able to "pop" a shower door and attack him. (*Id.* at 4; Dkt. #7-1 at 2.) Staff initially ran while Gordon tried unsuccessfully to stab Plaintiff in the chest, and staff were only "making it seem like" they were trying to stop Gordon's attack as the two inmates wound up on the floor. (Dkt. #7-1 at 3.) Once on the floor, Gordon again attempted to stab Plaintiff in the chest several times before Officer Oseya pulled Gordon off Plaintiff and sprayed Gordon with "gas." (*Id.*) Another officer on the scene, Caldwell, "was the one makin [sic] look good for the camera." (*Id.*) Plaintiff alleges that he was stabbed in the knee while kicking his assailant during this event. (*Id.*) He was later housed in the same segregation area of the prison near where Gordon was already housed. (*Id.*) Other inmates began making noise and screaming "round two as if it was set up for him to have another shot at killing me." (*Id.*) Plaintiff does not allege, however, that there was any further altercation with Gordon. He does allege that the attack "was a set up" and that he "feel[s]" that his problems in the Coffield Unit are because of his pending lawsuit against an officer who works across the street at the Michael Unit. (Dkt. #7 at 3; Dkt. #7-1 at 2.) Plaintiff was given an x-ray and antibiotics for the wound to his knee, although a nurse tried to convince the doctor to send him to the hospital to have it "fix[ed]." (Dkt. #7-1 at 4.)

In addition to the allegedly "set up" attack by his fellow inmate, Plaintiff complains about a laundry list of other mistreatment in prison. He says he "feel[s] they are poisoning [his] food." (Dkt. #7 at 4.) He alleges vaguely that he continues to be "harrassed [sic] by staff and inmates" and that staff continues to try to lure him into dangerous situations, although he does not specify

the danger or allege that he has actually been harmed since the May 12 attack. (Dkt. #7-1 at 1, 4.) He references a pending sexual harassment claim against an officer not alleged to have any role in the May 12 assault. (*Id.*) He complains that staff failed to respond to a ten-day hunger strike he staged in May. (*Id.* at 4, 8.) He asserts that he has been "pushing for changes" in prison that have not been implemented, including changing the telephone access, changing the execution protocol from lethal injection to the removal of organs to be donated to children, and celebrating women's right to vote. (*Id.* at 5.)

Plaintiff further complains about other dissatisfactions with his prison conditions, such as the inadequate punishment of "perverts" as compared to inmates caught with cell phones, not being able to call his family, the failure to respond appropriately to his grievances and other institutional forms, clogged vents, and inefficient pod arrangements, "let alone heat stroke." (*Id.* at 6, 8.) At times he attributes his alleged mistreatment to these "changes [he is] fighting for," but he also says he "feel[s] all the drama" he has experienced at Coffield is because of his pending lawsuit against the officer who works across the street and that all the staff "has it out" for him because "they are working together." (*Id.* at 2, 5, 6.) He asserts that he has "a paper trail" and "ha[s] document[ed everything," but he does not provide any specific facts to connect any of the events about which he complains to a conspiracy. (*Id.* at 5.)

Finally, Plaintiff complains at length that he was wrongfully convicted as a result of systemic failures in the Texas system of criminal justice. (Dkt. #7-1 at 7–8.) By separate order, the Court has severed this habeas claim from this case and transferred it to the district court having venue over such claims.

Plaintiff sues TDCJ Director Bobby Lumpkin, "O.I.G.," Captain Defoor, Officer Oseya, and fellow inmate Anthony Gordon. (Dkt. #7 at 3.) He seeks unspecified "payment for injury and stress," a transfer to be closer to family in Houston, and release on appeal bond in connection with his claim of innocence. (*Id.* at 4.)

II. Legal Standards and Preliminary Screening

Plaintiff is a prisoner seeking redress from an officer or employee of a governmental entity, so his complaint is subject to preliminary screening pursuant to 28 U.S.C. § 1915A despite his payment of the filing fee. *See Martin v. Scott*, 156 F.3d 578, 579-80 (5th Cir. 1998) (per curiam). That statute provides for *sua sponte* dismissal of a complaint—or any portion thereof—if the Court finds it frivolous or malicious, if it fails to state a claim upon which relief can be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous if it lacks an arguable basis in law or fact. *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009). The Fifth Circuit has held that a complaint lacks an arguable basis in fact when "the facts alleged are fantastic or delusional scenarios or the legal theory upon which a complaint relies is indisputably meritless." *Id.* (quoting *Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999) (internal quotation marks omitted)). In other words, during the initial screening under section 1915A, a court may determine that a prisoner's complaint is frivolous if it rests upon delusional scenarios or baseless facts—and dismiss the complaint. *See Henry v. Kerr County, Texas*, 2016 WL 2344231 *3 (W.D. Tex. May 2, 2016) ("A court may dismiss a claim as factually frivolous only if the facts alleged are clearly baseless, fanciful, fantastic, delusional, or otherwise rise to the level of the irrational or the wholly incredible, regardless of whether there are judicially

noticeable facts available to contradict them.") (citing *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992)).

Moreover, a complaint fails to state a claim upon which relief may be granted where it does not allege sufficient facts which, taken as true, state a claim which is plausible on its face and thus does not raise a right to relief above the speculative level. *See Montoya v. FedEx Ground Packaging Sys. Inc.*, 614 F.3d 145, 149 (5th Cir. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim has factual plausibility when the pleaded factual content allows the court to draw reasonable inferences that the defendant is liable for the misconduct alleged. *See Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This plausibility standard is not akin to a probability standard; rather, the plausibility standard requires *more than the mere possibility* that the defendant has acted unlawfully. *Twombly*, 550 U.S. at 556.

All well-pleaded facts are taken as true, but the district court need not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions. *See Whatley v. Coffin*, 496 F. App'x 414 (5th Cir. 2012) (unpublished) (citing *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005)). Crucially, while the federal pleading rules do not require "detailed factual allegations," the rule does "demand more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading offering "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" will not suffice, nor does a complaint which provides only naked assertions that are devoid of further factual enhancement. *Id.*

A federal court has an independent duty, at any level of the proceedings, to determine whether it properly has subject matter jurisdiction over a case. *Ruhgras AG v. Marathon Oil Co.*,

526 U.S. 574, 583 (1999) ("[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level."); *McDonal v. Abbott Labs.*, 408 F.3d 177, 182 n.5 (5th Cir. 2005) ("federal court may raise subject matter jurisdiction *sua sponte*").

III. Discussion and Analysis

Claims under Section 1983 must rest on specific facts and reasonable factual inferences, not on Plaintiff's unsupported feelings. Particularly with regard to any claim that defendants have conspired to harm him, a plaintiff must plead specific, non-conclusory facts that establish that there was an agreement among the defendants to violate his federal civil rights. *Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004); *Lynch v. Cannatella*, 810 F.2d 1363, 1369-70 (5th Cir. 1987) (plaintiffs asserting conspiracy claims under Section 1983 must plead the operative facts on which their claim is based; bald allegations that a conspiracy existed are insufficient). Plaintiff's unsubstantiated "feel[ing]" that staff have conspired to harm or mistreat him does not satisfy that standard. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) ("It is the conclusory nature of respondent's allegations . . . that disentitles them to the presumption of truth."); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2000) (holding that conspiracy claim did not require "detailed factual allegations" but must be supported "with enough factual matter (taken as true) to suggest that an agreement was made"); *Parker v. Currie*, 359 F. App'x 488, 490 (5th Cir. 2010) (holding that prisoner's speculation that his injuries were "orchestrated by prison officials . . . without additional support, calls for dismissal).

In the absence of any facts demonstrating a conspiracy between prison officials and inmate Gordon, Gordon is not a proper defendant under Section 1983. To state a claim under Section 1983, a plaintiff must show the defendant violated his constitutional rights while acting under color

of state law, meaning the defendant was a state actor. *Moody v. Farrell*, 868 F.3d 348, 351 (5th Cir. 2017); *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013), cert. denied, 572 U.S. 1087 (2014); *see* 42 U.S.C. § 1983. Private individuals are not state actors subject to suit under section 1983 unless their conduct is "fairly attributable to the state." *Moody*, 868 F.3d at 352. Plaintiff here does not allege any specific facts that suggest Gordon was a state actor for the purposes of suit under Section 1983.

Plaintiff also fails to state a claim for deliberate indifference under the Eighth Amendment. The Eighth Amendment to the United States Constitution "'does not mandate comfortable prisons,' but neither does it permit inhumane ones." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citation omitted). To plead a constitutional violation based on the conditions of an inmate's confinement, a plaintiff must allege conditions that objectively "pos[e] a substantial risk of serious harm." *Id.* at 834. He must also allege facts showing that prison officials were subjectively deliberately indifferent to that risk to his health or safety. *Id.*; *see also Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (summarizing objective and subjective prongs of an Eighth Amendment violation).

The deliberate indifference required to state a constitutional claim "is an extremely high standard to meet," *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001), and prison officials act with such indifference only if they know an inmate faces a substantial risk of serious harm and they disregard that risk by failing to take reasonable measures to alleviate it. *See Farmer*, 511 U.S. at 837; *accord Taylor v. Stevens*, 946 F.3d 211, 221 (5th Cir. 2019). Thus, the prison official "must both be aware of the facts from which the inference could be drawn that substantial risk of serious harm exists, and he must also draw the inference." *Id.*

Specifically, while "prison officials have a duty to protect prisoners from violence at the hands of other prisoners," a prison official may be held liable under the constitution only if he "ha[s] a sufficiently culpable state of mind, which, in prison-conditions cases, is one of 'deliberate indifference' to inmate health or safety." *Cantu v. Jones*, 293 F.3d 839, 844 (5th Cir. 2002) (quoting *Farmer*, 511 U.S. at 834 (1994)). "Deliberate indifference cannot be inferred merely from a negligent or even a grossly negligent response to a substantial risk of serious harm." *Torres v. Livingston*, 972 F.3d 660, 663 (5th Cir. 2020), *cert. denied*, No. 20-6847, 2021 WL 1072375 (U.S. Mar. 22, 2021), *reh'g denied*, No. 20-6847, 2021 WL 2302124 (U.S. June 7, 2021) (quoting *Williams v. Banks*, 956 F.3d 808, 811 (5th Cir. 2020)).

As discussed above, Plaintiff alleges nothing more than his subjective feelings to support any claim that the defendant prison staff were consciously aware of any threat to his safety the day he was attacked or at any other time. He suggests that staff on the scene did not immediately assist him during the attack, but he acknowledges that they did take some action that made it "look good for the cameras" and ultimately stopped the attack before he sustained any injury beyond the stab wound to his knee. A briefly delayed or ineffectual response to an attack might constitute negligence, but it does not, alone, create a plausible inference of deliberate indifference to Plaintiff's safety. And Plaintiff does not allege any specific threats or dangers since that attack.

Nor does he allege specific facts demonstrating that anyone was deliberately indifferent to his medical needs after the attack. He acknowledges that he was X-rayed and provided with antibiotics for his injury. He indicates that a doctor refused to accept a nurse's suggestion that he be transferred to a hospital for further treatment, but he does not specify what additional treatment he needed or allege that he suffered any additional harm from lack of treatment. Similarly, although

he vaguely indicates a delay of some length between the attack and the treatment he received, he does not expressly allege that he sought and was denied any treatment during that period or that the apparent delay caused him any additional injury.

Moreover, Plaintiff does not allege that any of the named defendants bore any responsibility for his medical care or lack thereof. And with regard to Director Lumpkin, Plaintiff does not allege any involvement in any of the alleged violations. But a plaintiff in a civil rights case must demonstrate the personal involvement of those alleged to have violated his constitutional rights. *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."); *Thompson v. Crnkovich*, No. 1:16-CV-055-BL, 2017 WL 5514519, at *2 (N.D. Tex. Nov. 16, 2017) ("Without personal involvement or participation in an alleged constitutional violation, or implementation of a deficient policy, the individual should be dismissed as a defendant."). Furthermore, the doctrine of respondeat superior does not apply to Section 1983. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978); *Williams v. Luna*, 909 F.2d 121, 123 (5th Cir. 1990). Supervisory officials, therefore, are not liable under Section 1983 on any vicarious liability theory simply by virtue of their positions.

And finally, none of the other discomforts of prison life referenced in the amended complaint—from the limited phone access to the dirty vents, etc.—amounts to the deprivation of the "minimal civilized measure of life's necessities" required to state a claim for constitutional violation. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). And even if such conditions were objectively uncivilized in the abstract, Plaintiff does not allege that he has suffered any injury as a result. *Alexander v. Tippah County, Miss.*, 351

F.3d 626, 631 (5th Cir. 2003) (explaining that prisoner seeking to recover damages for allegedly unconstitutional prison conditions must allege facts showing more than de minimis injury.)

IV. Conclusion

For the reasons set forth above, Plaintiff's amended complaint fails to state a claim for which relief can be granted and should be dismissed on that basis.

RECOMMENDATION

Accordingly, the undersigned recommends that Plaintiff's complaint be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A(b) and 1915(e)(2).

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So ORDERED and SIGNED this 30th day of November, 2021.

K. Nicole Mitchell

K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 07, 2022

#1181239
Mr. Alex Adams
CID McConnell Prison
3001 S. Emily Drive
Beeville, TX 78102-0000

No. 22-40364 Adams v. Lumpkin
USDC No. 6:21-CV-196

Dear Mr. Adams,

Received amongst a series of other documents received intended for processing in separate actions, was a "Motion to Present Exhibits" with the unfiled exhibits intended for filing. On August 31, 2022, this appeal was dismissed for failure to pay the filing fee within the time provided. In light of the dismissal of the appeal, no action will be taken on this motion.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 13, 2022

#1181239
Mr. Alex Adams
CID McConnell Prison
3001 S. Emily Drive
Beeville, TX 78102-0000

No. 22-40364 Adams v. Lumpkin
USDC No. 6:21-CV-196

Dear Mr. Adams,

We received your "Motion for COA and Brief in Support, Motion for Appointment of Counsel, Written Objections to the Findings, Conclusions and Recommendations Contained in this Report, Motion to Present Exzibits (namely green card) in Support of Motion for Extension of Time to File Objections, Notice of Appeal, Motion to Set Aside Judgment, Motion for Original Complaint to be Used and Exzibits" and "Motion for COA, Brief in Support, and Notice of Appeal". On August 31, 2022, this appeal was dismissed for failure to pay the filing fee within the time provided. Accordingly, we are taking no action on this filing.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L Leto

By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 07, 2022

Mr. Alex Adams
#1181239CID
Coffield Prison
2661 FM 2054
Tennessee Colony, TX 75884-0000

Dear Sir:

I am responding to the motion described below that was received together with a collection of other documents within the same mailing, for the following reason(s):

As an initial matter, this court does not accept wholesale filings, nor do we issue appeal bonds. Your combined "Motion for Appeal bond, Motion to Present Exhibits, Notice of Appeal, Motion for COA, Brief in Support of COA" refers to multiple district court and trial court case numbers. To any extent you intend to file a motion in an existing appeal that is not consolidated before this court, *separate filings as to* ***each appeal*** will be required. In doing so, we further advise that this is a court of limited jurisdiction. This means we can only act on cases which have been filed and decided in a U. S. District Court, or an agency within this circuit.

To any extent you intend to file yet another notice of appeal, same should be both captioned and filed **directly** with the appropriate district court.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677