NOT RECOMMENDED FOR PUBLICATION

No. 21-1755

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TERRENCE TERRELL MOORE, Plaintiff-Appellant, v. GOVERNOR GRETCHEN WHITMER, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: BOGGS, THAPAR, and NALBANDIAN, Circuit Judges.

Terrence Terrell Moore, a Michigan prisoner proceeding pro se, appeals the district court's judgment dismissing his civil rights action for failure to state a claim. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In February 2021, Moore and twelve other prisoners housed at the Lakeland Correctional Facility (LCF) filed a complaint pursuant to 42 U.S.C. § 1983 against Michigan Governor Gretchen Whitmer, Michigan Department of Corrections (MDOC) Director Heidi Washington, and numerous correctional and medical officials at LCF, alleging that the defendants violated the plaintiffs' constitutional rights by disregarding the risk of harm from COVID-19, failing to protect inmates from the virus, and retaliating against the plaintiffs for their complaints about the defendants' response to the pandemic. The district court denied the plaintiffs' request for class certification and severed their claims into separate actions. The district court allowed Moore to

proceed under the existing case number and ordered him to file an amended complaint containing only those allegations relevant to his claims for relief.

In his amended complaint, Moore alleged that he and other prisoners at LCF were exposed to COVID-19 beginning in March 2020, that he contracted the virus and experienced various symptoms, and that the defendants knew or should have known of the imminent threat posed by COVID-19 yet acted with deliberate indifference to that threat and failed to provide a safe environment. Moore sought injunctive, declaratory, and monetary relief. Moore also filed a motion to amend and supplement his pleadings, seeking to add the new defendants named in his amended complaint. Three months later, Moore filed another motion to amend and supplement his pleadings to add ten new defendants. Moore then filed another supplemental pleading, this time seeking "to compel delivery of Defendants' bond for prosecution and to join their surety as a party to the action."

Upon initial review, the district court dismissed Moore's complaint for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A(b), and 42 U.S.C. § 1997e(c). The district court granted Moore's first motion to amend and supplement his pleadings and considered that information in reviewing the sufficiency of his complaint. The district court concluded that Moore had failed to allege facts showing that the defendants violated his constitutional rights and had instead made conclusory assertions of their responsibility by virtue of their job duties. The district court denied Moore's second motion to amend and supplement his pleadings as futile, pointing out that he had failed to allege any specific facts against the ten new defendants that he sought to add. With respect to Moore's third supplemental pleading, the district court determined that his claims for the defendants' alleged breach of their bonds arose under state law, specifically Michigan Compiled Laws § 600.2923, rather than federal law and denied his motion as futile because the court would decline to exercise supplemental jurisdiction over those state-law claims. Finally, the district court denied Moore's motion for appointment of counsel as moot. This timely appeal followed.

We review de novo the district court's dismissal of a complaint for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b) and 42 U.S.C. § 1997e(c). *See Hill v. Lappin*,

630 F.3d 468, 470 (6th Cir. 2010); *Boyd v. Corr. Corp. of Am.*, 380 F.3d 989, 993 (6th Cir. 2004). To avoid dismissal, "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, 570 (2007)); *see Hill*, 630 F.3d at 470-71. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

"To state a claim under § 1983, a complaint must allege that persons acting under color of state law caused the deprivation of a federal statutory or constitutional right." *Small v. Brock*, 963 F.3d 539, 541 (6th Cir. 2020). "[A] plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676; *see Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008) ("This Court has consistently held that damage claims against government officials arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right."). Moore must therefore state "a plausible constitutional violation by each individual defendant." *Heyne v. Metro. Nashville Pub. Schs.*, 655 F.3d 556, 564 (6th Cir. 2011).

In his amended complaint, Moore made the general allegation that Governor Whitmer, LCF Warden Bryant Morrison, and other officials failed to enforce Director Washington's memorandum related to COVID-19 precautions. But Moore failed to allege any facts indicating that these officials "kn[ew] of and disregard[ed] an excessive risk to inmate health or safety" as required to state an Eighth Amendment claim against them. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *see Wilson v. Williams*, 961 F.3d 829, 839-40 (6th Cir. 2020). With respect to the other individual defendants, Moore alleged that each defendant "knew or should have known the imminent threat existed of death to the vulnerability of a prisoner freeing himself" but failed to allege any facts demonstrating what each defendant did to violate his constitutional rights. Moore's first motion to amend and supplement his pleadings made the conclusory allegation, without any specific facts supporting a constitutional violation, that the newly added defendants

J.A. 8a.

were responsible for the health or security of prisoners under their care by virtue of their job duties. But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Because Moore failed to allege a facially plausible constitutional claim against any defendant, the district court properly dismissed his complaint for failure to state a claim.

The district court denied as futile both Moore's second motion to amend and supplement his pleadings and his third supplemental pleading. When the district court denies a motion to amend on the basis that the proposed amendment would be futile, we apply de novo review. *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000).

Moore's second motion to amend and supplement his pleadings sought to add ten new defendants. Moore once again made the conclusory assertion that the proposed defendants were responsible for the health and security of the prisoners under their care. Because Moore failed to allege any specific facts against the proposed defendants, the district court properly denied his second motion to amend and supplement his pleadings as futile. *See Parchman v. SLM Corp.*, 896 F.3d 728, 738 (6th Cir. 2018).

Moore's third supplemental pleading sought "to compel delivery of Defendants' bond for prosecution and to join their surety as a party to the action." Moore asserted that the defendants were liable under Michigan Compiled Laws § 600.2923 for the alleged breach of their bonds. The district court properly rejected Moore's argument that the district court had original jurisdiction over his supplemental pleading under 28 U.S.C. § 1352 because he failed to allege that the bonds were "executed under any law of the United States" and instead alleged that the bonds were "required by the law of Michigan." As the district court pointed out, "a federal court that has dismissed a plaintiff's federal-law claims should not ordinarily reach the plaintiff's state-law claims." *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006). Under these circumstances, where Moore's federal-law claims had been dismissed and the defendants had yet to be served, the district court would not have abused its discretion in declining to exercise supplemental jurisdiction over his state-law claims. *See Gamel v. City of Cincinnati*, 625 F.3d

949, 951-53 (6th Cir. 2010). Accordingly, the district court properly denied Moore's third supplemental pleading as futile.

Finally, the district court denied Moore's motion for appointment of counsel as moot. We review the district court's decision to deny appointed counsel for abuse of discretion. *Cavin v. Mich. Dep't of Corr.*, 927 F.3d 455, 461 (6th Cir. 2019). "Appointment of counsel in a civil case is not a constitutional right" but "a privilege that is justified only by exceptional circumstances." *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993) (quoting *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985)). Given that the district court properly dismissed Moore's complaint for failure to state a claim, the district court did not abuse its discretion in denying appointed counsel.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

J.A. 102.

No. 21-1755

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 19, 2022
DEBORAH S. HUNT, Clerk

TERRENCE TERRELL MOORE,

Plaintiff-Appellant,

v.

GOVERNOR GRETCHEN WHITMER, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: BOGGS, THAPAR, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE TERRELL MOORE,

Plaintiff,

v.

GRETCHEN WHITMER et al.,

Defendants.
/

Case No. 1:21-cv-117

Honorable Janet T. Neff

OPINION

This is a civil rights action brought under 42 U.S.C. § 1983 by thirteen state prisoners housed at the Lakeland Correctional Facility (LCF). On June 22, 2021, the Court denied the request for a class action certification and severed the claims of the thirteen prisoners-plaintiffs into separate actions. (ECF No. 36.) Plaintiff Moore was allowed to proceed under the existing case number and was ordered to file an amended complaint containing only the allegations relevant to his claims for relief. (*Id.*) Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

J.A. 11a.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Lakeland Correctional Facility (LCF) in Coldwater, Branch County, Michigan. The events about which he complains occurred at that facility. Plaintiff sues Governor Gretchen Whitmer, MDOC Director Heidi E. Washington, Warden Bryant Morrison, Deputy Warden Robert Ault, Acting Administrative Assistant Janet Traeore, Doctor Margaret Quellete, Medical Provider E. Coe Hill, Registered Nurse Lori Blue, Law Librarian Linda Thompson, Resident Unit Manager Timothy Shaw, Resident Unit Manager Scott Cline, Corrections Officer Unknown Part(y)(ies) #1, and Corrections Officer Unknown Minor. Plaintiff also names Prisoner Counselors Karen Kowalski, Shawanda Cope, Patrick Daniels, Kevin Dirchell, and Dennis Randall.

In his amended complaint (ECF No. 47), Plaintiff alleges that in March of 2020, COVID-19 infections at LCF were rampant and that Defendants failed to adequately protect inmates, including Plaintiff, from infection. Plaintiff states that he became infected and suffered from coughing, sneezing, diarrhea, fever, headaches, loss of taste and smell, and weight loss. Plaintiff asserts that each of the named Defendants knew or should have known of the imminent danger posed to Plaintiff and other prisoners by COVID-19 but failed to act in accordance with their duties to protect Plaintiff from the virus, or to ensure that he could access appropriate process to gain early release from prison.

In Plaintiff's first motion to amend and supplement pleadings (ECF No. 49), Plaintiff lists all of the Defendants named in the earlier amended complaint. Plaintiff also attaches affidavits by himself and other prisoners, reciting facts related to his claims, as well as referring to the claims of other prisoners. (ECF No. 49-1.) Plaintiff attests that he began to feel sick on

March 11, 2020. On March 22, 2020, Plaintiff was diagnosed with COVID-19 as the result of a failure to properly quarantine infected inmates. In April of 2020, prisoner Dre'maris Jackson assisted Plaintiff with COVID-19 investigative reports regarding the donning and doffing of PPE by prison staff. Plaintiff claims that no masks or other PPE were issued for staff or inmates at LCF until mid- to late-April of 2020. Plaintiff states that, as a result of this conduct, he received retaliatory misconduct tickets on September 13, 2020; September 24, 2020; and October 18, 2020. Plaintiff claims that he and other prisoners obtained camera footage showing prison officials donning and doffing PPE in March, April, and May of 2020.

Plaintiff also filed a second motion to amend and to supplement his complaint, in which he merely seeks to add new Defendants to his action. (ECF No. 130.) Plaintiff's motion names Deputy Warden Troy Chrisman, Kirsten Losinski, Counselor Markiyroe Garrett, Business/Mailroom Manager Sue Middlestadt, Mailroom Employees Christine Boden and Michael Stevens, Accounting Assistant Jessica Jones, Lieutenant Christiana Borst, Lieutenant Frank Sobrieski, and Health Unit Manager Nathan Mikel. However, Plaintiff's supplemental pleading is entirely conclusory. Nowhere in Plaintiff's motion does he allege any specific facts against any of the individuals he seeks to add to this action.

In Plaintiff's third supplemental pleading (ECF No. 149), Plaintiff alleges that Defendants have put in place bonds to insure performance of their duties. Plaintiff contends that Defendants have breached the terms of those bonds and that he is entitled to recover damages as a result under Mich. Comp. Laws § 600.2923. Plaintiff posits that his bond claims are properly before this Court under 28 U.S.C. § 1352. Plaintiff states these claims generically with respect to all Defendants; he fails to allege any additional facts against any particular Defendant.

Plaintiff appears to be claiming that Defendants violated his rights under the Eighth Amendment. Plaintiff seeks compensatory and punitive damages, as well as injunctive relief.

II. **Failure to state a claim**

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr.*

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Corp. of Am., 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

III. **Eighth Amendment**

Plaintiff's allegations do not rise to the level of an Eighth Amendment violation. The Eighth Amendment imposes a constitutional limitation on the power of the states to punish those convicted of crimes. Punishment may not be "barbarous" nor may it contravene society's "evolving standards of decency." *Rhodes v. Chapman*, 452 U.S. 337, 345–46 (1981). The Amendment, therefore, prohibits conduct by prison officials that involves the "unnecessary and wanton infliction of pain." *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987) (per curiam) (quoting *Rhodes*, 452 U.S. at 346). The deprivation alleged must result in the denial of the "minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 347; *see also Wilson v. Yaklich*, 148 F.3d 596, 600–01 (6th Cir. 1998). The Eighth Amendment is only concerned with "deprivations of essential food, medical care, or sanitation" or "other conditions intolerable for prison confinement." *Rhodes*, 452 U.S. at 348 (citation omitted). Moreover, "[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment." *Ivey*, 832 F.2d at 954.

In order for a prisoner to prevail on an Eighth Amendment claim, he must show that he faced a sufficiently serious risk to his health or safety and that the defendant official acted with "'deliberate indifference' to [his] health or safety." *Mingus v. Butler*, 591 F.3d 474, 479–80 (6th Cir. 2010) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (applying deliberate indifference standard to medical claims)); *see also Helling v. McKinney*, 509 U.S. 25, 35 (1993) (applying deliberate indifference standard to conditions of confinement claims).

J.A. 152

As noted above, the assertions made by Plaintiff in his complaint, as well as in his supplemental pleadings, are entirely conclusory. Plaintiff merely states that Defendants are responsible by virtue of their job duties, but he fails to allege facts showing how they actually violated his rights. While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555. The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. The court need not accept "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements . . . ." *Iqbal*, 556 U.S. at 678. "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." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – that the pleader is entitled to relief." *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Therefore, Plaintiff's complaint is properly dismissed.

IV. Pending motions

As noted above, Plaintiff has filed three motions to amend and/or to supplement pleadings (ECF Nos. 49, 130, and 149). In Plaintiff's first motion, Plaintiff lists all of the Defendants named in the earlier amended complaint and makes conclusory assertions of wrongdoing against them. Plaintiff also attaches affidavits by himself and other prisoners, reciting facts related to his claims, as well as referring to the claims of other prisoners. (ECF No. 49-1.) The Court grants this motion and has considered the information presented in deciding on the merits of Plaintiff's complaint in this case.

In Plaintiff's second motion, Plaintiff merely seeks to add new Defendants to his action. (ECF No. 130.) Plaintiff's motion names Deputy Warden Troy Chrisman, Kirsten

Losinski, Counselor Markiyroe Garrett, Business/Mailroom Manager Sue Middlestadt, Mailroom Employees Christine Boden and Michael Stevens, Accounting Assistant Jessica Jones, Lieutenant Christiana Borst, Lieutenant Frank Sobrieski, and Health Unit Manager Nathan Mikel. However, nowhere in Plaintiff's motion does he allege any specific facts against any of the individuals named in that pleading. Therefore, even if the Court allowed Plaintiff to add these individuals to this action, his claims against them would fail because they are entirely conclusory. Although a district court may allow a plaintiff to amend his complaint before entering a sua sponte dismissal, it is not required to do so. *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *see also Coleman v. Tollefson*, 733 F.3d 175, 177 (6th Cir. 2013) (repeating that a court need not permit a plaintiff to amend his complaint before dismissing under the PLRA). Leave to amend should be denied if the amendment would be futile. *See Marx v. Centran Corp.*, 747 F.2d 1536, 1550 (6th Cir. 1984) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The Court concludes that Plaintiff's second motion to amend is properly denied as futile.

In Plaintiff's third supplemental pleading (ECF No. 149), he purports to add claims seeking damages for breach of Defendants' performance bonds. Those claims arise, Plaintiff alleges, under state law, specifically Mich. Comp. Laws § 600.2923. (ECF No. 149-1 PageID.1147.) Although the claims are created by state law, Plaintiff argues that they are properly brought in the federal courts under 28 U.S.C. § 1352, which states: "The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States . . . ." *Id.* Plaintiff does not allege that the Defendants' performance bonds—if they exist at all—were executed under "any law of the United States." To the contrary, he alleges that the bonds are "required by the law of Michigan." (ECF No. 149-1, PageID.1147.) Accordingly, Plaintiff's argument regarding federal jurisdiction under 28 U.S.C. § 1352 fails.

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The Court might alternatively exercise supplemental jurisdiction over Plaintiff's state-law breach of bond claim. But ordinarily, where a district court has exercised jurisdiction over a state-law claim solely by virtue of supplemental jurisdiction and the federal claims are dismissed prior to trial, the court will dismiss the remaining state-law claims. *See Experimental Holdings, Inc. v. Farris* 503 F.3d 514, 521 (6th Cir. 2007) ("Generally, once a federal court has dismissed a plaintiff's federal law claim, it should not reach state law claims.") (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)); *see also Southard v. Newcomb Oil Co., LLC*, --- F.3d ---, No. 20-5318, at *6 (6th Cir. Aug. 4, 2021) (citing *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006) (recognizing that once a federal court no longer has federal claims to resolve, it "should not ordinarily reach the plaintiff's state-law claims)); *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993). In determining whether to retain supplemental jurisdiction, "[a] district court should consider the interests of judicial economy and the avoidance of multiplicity of litigation and balance those interests against needlessly deciding state law issues." *Landefeld*, 994 F.2d at 1182; *see also Moon*, 465 F.3d at 728 ("Residual jurisdiction should be exercised only in cases where the interests of judicial economy and the avoidance of multiplicity of litigation outweigh our concern over needlessly deciding state law issues.") (internal quotations omitted). Dismissal, however, remains "purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (citing 28 U.S.C. § 1367(c)); *Orton v. Johnny's Lunch Franchise, LLC*, 668 F.3d 843, 850 (6th Cir. 2012).

Here, balancing the relevant considerations, the Court would decline to exercise supplemental jurisdiction over Plaintiff's state-law bond claims. Accordingly, it would be futile to permit the amendment urged by Plaintiff, and his most recent motion to amend is properly denied.

Plaintiff has also filed a motion for appointment of counsel (ECF No. 127). Indigent parties in civil cases have no constitutional right to a court-appointed attorney. *Abdur-Rahman v. Mich. Dep't of Corr.*, 65 F.3d 489, 492 (6th Cir. 1995); *Lavado v. Keohane*, 992 F.2d 601, 604–05 (6th Cir. 1993). The Court may, however, request an attorney to serve as counsel, in the Court's discretion. *Abdur-Rahman*, 65 F.3d at 492; *Lavado*, 992 F.2d at 604–05; *see Mallard v. U.S. Dist. Ct.*, 490 U.S. 296 (1989). However, because Plaintiff's complaint is properly dismissed for failure to state a claim, his motion for appointment of counsel is moot. Therefore, the Court will deny Plaintiff's request for appointment of counsel.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Although the Court concludes that Plaintiff's claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610–11, unless Plaintiff is barred from proceeding *in forma pauperis*, *e.g.*, by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

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An order and judgment consistent with this opinion will be entered.

Dated: November 9, 2021

/s/ Janet T. Neff
Janet T. Neff
United States District Judge

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