APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6700

JERAD M. ROSS,

Plaintiff - Appellant,

v.

COMMONWEALTH OF VIRGINIA; THE VIRGINIA DEPT. OF CORR.; HAROLD W. CLARKE; DAVID A. ROBINSON; RICK E. WHITE,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Michael F. Urbanski, Chief District Judge. (7:22-cv-00179-MFU-JCH)

Submitted: October 18, 2022 Decided: October 21, 2022

Before WYNN and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jerad Ross, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jerad Ross appeals the district court's order dismissing his 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915A(b). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Ross v. Virginia*, No. 7:22-cv-00179-MFU-JCH (W.D. Va. June 3, 2022). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 21, 2022

UNITED STATES COURT OF APPEALS
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Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JERAD M. ROSS, Plaintiff, v. COMMONWEALTH OF VIRGINIA, et al., Defendants.	)	Case No. 7:22-cv-00179 By: Michael F. Urbanski Chief United States District Judge

MEMORANDUM OPINION

Jerad M. Ross, a Virginia inmate proceeding pro se, filed this civil action against the Commonwealth of Virginia, the Virginia Department of Corrections ("VDOC"), and three VDOC officials, seeking relief for alleged violations of the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). The case is now before the court for review under 28 U.S.C. § 1915A. Having reviewed the complaint, the court concludes that it must be summarily dismissed for failure to state a claim upon which relief may be granted.

I. Background

Ross is incarcerated at Red Onion State Prison in Pound, Virginia. Compl., ECF No. 1, at 1. He has a prison job for which he is paid 45 cents per hour. Id. at 3. Ross alleges that "[t]he state's minimum wage service law requires all employers to pay their employees a minimum wage of $11.00 per working hour." Id. He claims that the defendants are "excluding him as an employee from participating in the state's minimum wage service [law] by reason of his disability—'an incarcerated prisoner convicted of a felony'—in violation of the Federal Rehabilitation Act and [the] Americans with Disabilities Act." Id.; see also id. at 5 (asserting

that he is being denied a minimum wage of $11.00 "by reason of disability—incarceration"). Ross seeks a judgment declaring that the VDOC "must pay its prisoner[] employees the state's minimum wage." Id. at 5. He styles the complaint as a "class action." Id. at 1.

II. Standard of Review

The court is required to review a complaint in a civil action in which an inmate seeks redress from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). On review, the court must dismiss a complaint if it "is frivolous, malicious, or fails to state a claim upon which relief may be granted." Id. § 1915A(b)(1). To survive dismissal for failure to state a claim, "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)). "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." Id.

III. Discussion

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, Section 504 the RA provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a). Thus, to state a claim under the ADA or the RA, a plaintiff must allege, among other things,

that he is disabled within the meaning of the statute. Both statutes define a "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A); 29 U.S.C. § 705(9)(B).

Ross's complaint does not plausibly allege that he is disabled within the meaning of the ADA or the RA. Contrary to his assertions, "incarceration is not such a 'disability.'" Holt v. Baker, 710 F. App'x 422, 424 (11th Cir. 2017); see also Graham v. Pa. Dep't of Transp., No. 2:21-cv-00449, 2021 U.S. Dist. LEXIS 91236, at *13 (W.D. Pa. May 13, 2021) ("Simply put, incarceration is not a disability."); Calhoun v. Berrien Cnty., No. 1:20-cv-01076, 2021 U.S. Dist. LEXIS 61720, at *7 n.3 (W.D. Mich. Mar. 31, 2021) ("Neither incarceration nor indigency meets the ADA's definition of disability."); Smith v. Ketchem, No. 1:01-cv-00176, 2002 U.S. Dist. LEXIS 29247, at *14 (N.D.W. Va. Mar. 20, 2002), aff'd, 45 F. App'x 254 (4th Cir. 2002) ("[B]eing incarcerated is not a disability under the [ADA]."). Consequently, the complaint fails to state a claim under either statute.

IV. Conclusion

For the foregoing reasons, the court concludes that Ross's complaint fails to state a claim upon which relief may be granted.* Therefore, the court will dismiss the complaint without prejudice under 28 U.S.C. § 1915A(b)(1). An appropriate order will be entered.

Entered: June 3, 2022

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Date: 2022.06.03 13:32:09 -04'00'

Michael F. Urbanski
Chief United States District Judge

* Additionally, to the extent the complaint is styled as a "class action," pro se class actions are not permitted. See Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975).

IN THE UNITED STATES DISTRICT COURT
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ORDER

For the reasons set forth in the accompanying memorandum opinion, the plaintiff's complaint is **DISMISSED** without prejudice under 28 U.S.C. § 1915A(b)(1), and the Clerk shall **STRIKE** the case from the court's active docket.

The Clerk is directed to send a copy of this order and the accompanying memorandum opinion to the plaintiff.

It is so **ORDERED**.

Entered: June 3, 2022

Digitally signed by Michael F. Urbanski Chief U.S. District Judge
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Michael F. Urbanski
Chief United States District Judge