Appendix 4a 1 of 2

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7222

REGINALD L. WILSON,

Plaintiff - Appellant,

v.

BRAD PERRITT; KENNETH E. LASSITER; GEORGE W. BAYSDEN, JR.; AMANDA EDWARDS; ROSEMARY E. BIANCARDI; JOHN DOE, #1; JOHN DOE, #2,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:20-ct-03376-BO)

Submitted: November 22, 2022 Decided: November 28, 2022

Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Reginald L. Wilson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Reginald L. Wilson appeals the district court's order dismissing his 42 U.S.C. § 1983 action for failure to state a claim. We have reviewed the record and find no reversible error. Accordingly, we affirm. *Wilson v. Perritt*, No. 5:20-ct-03376-BO (E.D.N.C. Aug. 9, 2021). 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CT-3376-BO

REGINALD L. WILSON, Plaintiff, v. BRAD PERRITT, et al., Defendants.	)	**ORDER**

This matter is before the court for frivolity review of plaintiff's complaint pursuant to 28 U.S.C. § 1915, and on plaintiff's motion for appointment of counsel (D.E. 8).

BACKGROUND

On December 21, 2020, Reginald L. Wilson ("plaintiff"), a state inmate proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983. See Compl. (D.E. 1). The allegations of plaintiff's complaint arose at Sampson Correctional Institution ("Sampson") and Tabor Correctional Institution ("Tabor"). See Compl. at 4–5. On June 7, 2017, plaintiff was found guilty of three disciplinary infractions. See Compl. at 4; Ex. A (D.E. 1-1) 1–2. As a result, plaintiff was assigned to Restrictive Housing for Control Purposes ("RCHP") for a period of 180 days and demoted from medium to close custody status. See Compl. at 4; Exs. B–C (D.E. 1-1) 3–4. On October 13, 2017, plaintiff's case manager Amanda Edwards ("Edwards") recommended that he remain in RHCP due to a subsequent disciplinary infraction, which plaintiff contends he did not commit. See Compl. at 5; Ex. F (D.E. 1-1) 7–8. On October 17 and 25, 2017, plaintiff met with the Facility Classification Committee ("FCC") and the Director's Classification Committee ("DCC"), and they agreed with Edwards's recommendation that plaintiff remain in RHCP for an additional 180 days. See Compl.

at 5; Exs. G–H (D.E. 1-1) 9–11. On March 20, 2018, plaintiff received a grievance response which stated that he had been recommended for release from RHCP. See Compl. at 6; Ex. I (D.E. 1-1) 17.

Plaintiff contends defendants Edwards, Superintendent Brad Perritt ("Perritt"), Director of Prisons Kenneth E. Lassiter ("Lassiter"), Program Supervisor George W. Baysden, Jr. ("Baysden"), and FCC staff members Rosemary E. Biancardi ("Biancardi") and John Does 1–2 subjected him to cruel and unusual punishment and to punishment without due process of law in violation of his Eighth and Fourteenth Amendment rights. See Compl. at 2–3; 6–8. Plaintiff also brings state law claims for negligence and false imprisonment, and alleges defendants violated the North Carolina Department of Public Safety's policies. See Compl. at 7–8. Plaintiff seeks compensatory and punitive damages. See Compl. at 8–9.

DISCUSSION

A. Standard of Review

Section 1915 provides that courts shall review complaints filed by prisoners seeking leave to proceed in forma pauperis and dismiss such complaints when they are frivolous, malicious, or fail to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(i)-(ii). A complaint is frivolous where "it lacks an arguable basis . . . in law." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

To state a claim on which relief may be granted, "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)). The standard used to evaluate the sufficiency of the pleading is flexible, and a *pro se* complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). Erickson,

however, does not "undermine [the] requirement that a pleading contain 'more than labels and conclusions.'" Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Twombly, 550 U.S. at 555); see Ashcroft, 556 U.S. at 678–79.

"To state a claim under [section] 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); see Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Additionally, a section 1983 plaintiff must plausibly allege the personal involvement of a defendant. See, e.g., Iqbal, 556 U.S. at 676; Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691–92 (1978); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

B. Fourteenth Amendment Due Process Claims

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "To state a procedural due process violation, a plaintiff must (1) identify a protected liberty or property interest and (2) demonstrate deprivation of that interest without due process of law." Prieto v. Clarke, 780 F.3d 245, 248 (4th Cir. 2015). Generally, a prisoner has no protected liberty interest in a specific custody classification, a transfer, a non-transfer, or in work release. See, e.g., Wilkinson v. Austin, 545 U.S. 209, 221–22 (2005); O'Bar v. Pinion, 953 F.2d 74, 83–84 (4th Cir. 1991); Paylor v. Lewis, No. 5:12-CT-3103-FL, 2016 WL 1092612, at *12 (E.D.N.C. Mar. 21, 2016). Rather, liberty interests that the Due Process Clause protects "will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995) (internal quotations omitted); see Prieto, 780 F.3d at 249; Incumaa v. Stirling, 791 F.3d 517, 527 (4th Cir. 2015); Paylor, 2016 WL

1092612, at *11–12.

Here, plaintiff has failed to identify a protected liberty interest. Plaintiff's temporary assignment in RHCP is a custody classification and prisoners do not possess a protected liberty interest in a specific custody classification. Moreover, plaintiff does not allege any facts showing an atypical and significant hardship in relation to the ordinary incidents of prison life. Instead, plaintiff argues defendants violated North Carolina Department of Public Safety policies when they decided that he should remain in RHCP for an additional 180 days. See Compl. at 7–8. A violation of a prison policy that does not result in a constitutional violation, however, does not create a viable claim under section 1983. See Jackson v. Sampson, 536 F. App'x 356, 357 (4th Cir. 2013) (per curiam) (unpublished); Joyner v. Patterson, No. 0:13-2675-DCN-PJG, 2014 WL 897121, at *4 (D.S.C. Mar. 6, 2014) (unpublished), aff'd, 579 F. App'x 748 (4th Cir. 2015) (per curiam) (unpublished). Thus, the court dismisses plaintiff's Fourteenth Amendment claims for failure to state a claim. See, e.g., Walker v. Clarke, No. 7:19cv00743, 2020 WL 7373594, at *5–6 (W.D. Va. Dec. 16, 2020) (unpublished); Johnson v. Johnson, No. 1:17-00608, 2018 WL 4374231, at *12–13 (S.D. W.Va. June 5, 2018) (unpublished), report and recommendation adopted, 2018 WL 3629822 (July 31, 2018) (unpublished); Covington v. Lassiter, No. 1:16-cv-387-FDW, 2017 WL 3840280, at *5–6 (W.D.N.C. Sept. 1, 2017) (unpublished); Paylor, 2016 WL 1092612, at *11–15.

C. Eighth Amendment Condition of Confinement Claims

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. To establish a prima facie claim that prison conditions violate the Eighth Amendment, a plaintiff must show "(1) that the deprivation of a basic human need was objectively sufficiently serious, and (2) that subjectively the officials acted with a sufficiently culpable state of mind." De'lonta v. Johnson, 708 F.3d 520, 525 (4th Cir. 2013) (alterations and quotation omitted);

see Rish v. Johnson, 131 F.3d 1092, 1096 (4th Cir. 1997); Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir. 1993). The objective prong requires the prisoner to show that "the deprivation of [a] basic human need was objectively sufficiently serious." Strickler, 989 F.2d at 1379 (emphasis and quotation omitted). "Only an extreme deprivation, that is, a serious or significant physical or emotional injury resulting from the challenged conditions, or substantial risk thereof, will satisfy the objective component of an Eighth Amendment claim challenging the conditions of confinement." De'lonta, 708 F.3d at 525 (quotation omitted); see Rish, 131 F.3d at 1096. The subjective prong requires the prisoner to show that the prison official acted with deliberate indifference to the inmate's health or safety. See, e.g., Farmer v. Brennan, 511 U.S. 825, 834–40 (1994); De'lonta, 708 F.3d at 525; Johnson v. Quinones, 145 F.3d 164, 167 (4th Cir. 1998); Strickler, 989 F.2d at 1379.

Here, plaintiff again has failed to state a constitutional claim. Plaintiff's allegations that remaining in RHCP for an additional 180 days constitutes cruel and unusual punishment fails because, as noted, plaintiff does not have a constitutionally recognized liberty interest in a particular security classification or prison placement and he does not plausibly allege an atypical and significant hardship. Thus, the court dismisses plaintiff's Eighth Amendment claims for failure to state a claim. See, e.g., Hollis v. Palmer, No. 6:20-cv-04472-JMC-KFM, 2021 WL 1740295, at *3 (D.S.C. Apr. 5, 2021) (unpublished), report and recommendation adopted, 2021 WL 1739747 (D.S.C. Apr. 30, 2021) (unpublished); Scott v. Bennett, No. 3:18-cv-00583-MR, 2021 WL 965317, at *5 (W.D.N.C. Mar. 15, 2021) (unpublished), Ashley v. Bush, No. 6:20-cv-02802-SAL-KFM, 2021 WL 2635902, at *4–5 (D.S.C. Jan. 7, 2021) (unpublished), report and recommendation adopted, 2021 WL 2635495 (D.S.C. June 25, 2021) (unpublished); Wright v. Lassiter, No. 1:18-cv-90-FDW, 2018 WL 4186418, at *9–10 (W.D.N.C. Aug. 30, 2018) (unpublished); McFadden v. Jenkins, No. 1:17-cv-98-FDW, 2017 WL 4350979, at *2 (W.D.N.C. Sept. 29, 2017)

(unpublished).

D. State Law Claims

In light of the dismissal of plaintiff's federal claims, the court declines to exercise supplemental jurisdiction over any state-law claims, and dismisses those claims without prejudice. 28 U.S.C. § 1367(c)(3); see Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966); ESAB Grp., Inc. v. Zurich Ins. PLC, 685 F.3d 376, 394 (4th Cir. 2012); Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995).

E. Motion for Appointment of Counsel

As for plaintiff's motion for appointment of counsel, no right to counsel exists in civil cases absent "exceptional circumstances." Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated in part on other grounds by Mallard v. U.S. Dist. Court, 490 U.S. 296 (1989); see Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). The existence of exceptional circumstances "hinges on [the] characteristics of the claim and the litigant." Whisenant, 739 F.2d at 163. The facts of this case and plaintiff's abilities do not present exceptional circumstances. Accordingly, the court denies plaintiff's motion.

CONCLUSION

In sum, the court DISMISSES the complaint (D.E. 1) for failure to state a claim. The court DENIES plaintiff's motion for appointment of counsel (D.E. 8). The clerk shall close the case.

SO ORDERED. This 9 day of August 2021.

Terrence Boyle
TERRENCE W. BOYLE
United States District Judge

Appendix 3a

FILED: January 18, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7222
(5:20-ct-03376-BO)

REGINALD L. WILSON

Plaintiff - Appellant

v.

BRAD PERRITT; KENNETH E. LASSITER; GEORGE W. BAYSDEN, JR.; AMANDA EDWARDS; ROSEMARY E. BIANCARDI; JOHN DOE, #1; JOHN DOE, #2

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Harris, Judge Richardson, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CT-3376-BO

REGINALD L. WILSON, Plaintiff,	)	
v.	)	**ORDER**
BRAD PERRITT, et al., Defendants.	)	

On December 21, 2020, Reginald L. Wilson ("plaintiff"), a state inmate proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983. See Compl. (D.E. 1). On August 9, 2021, the court conducted a frivolity review and dismissed the complaint for failure to state a claim (D.E. 10). On the same date, the clerk entered judgment (D.E. 11). The matter is now before the court on plaintiff's post-judgment motion for leave to amend the complaint (D.E. 12).

A district court may not grant a post-judgment motion to amend the complaint unless the court first vacates its judgment pursuant to Fed. R. Civ. P. 59(e) or 60(b). See Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470–71 (4th Cir. 2011). Where a motion to alter judgment "seek[s] to set aside the judgment of dismissal and, at the same time, to file an amended complaint" the court "need only ask whether the amendment should be granted" under Federal Rule of Civil Procedure 15. Calvary Christian Ctr. v. City of Fredericksburg, Va., 710 F.3d 536, 540–41 (4th Cir. 2013). A motion to amend under Rule 15 should be granted unless the "the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." Laber v. Harvey, 438 F.3d 404, 426–27 (4th Cir. 2006). An amendment is futile where it fails to state a claim upon which relief can be granted. See Katyle, 637 F.3d at

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470–71.

Plaintiff seeks to amend the complaint by "adding new evidence" to "show that the defendant Ms. Edward claims for her recommendation was false." (D.E. 12) 1. Plaintiff contends the "new evidence will also show that the plaintiff did not get a subsequent disciplinary infraction on 6-6-2017 or any disciplinary infraction from 6-16-2017 to 7-16-2018 while on RHCP." Id. at 1–2. Plaintiff's proposed amendment is futile. See Katyle, 637 F.3d at 471. Thus, the court denies plaintiff's motion for leave to amend the complaint.

In sum, the court DENIES as futile plaintiff's motion for leave to amend the complaint (D.E. 12).

SO ORDERED. This 23 day of February 2022.

Terrence W. Boyle

TERRENCE W. BOYLE
United States District Judge

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EXHIBIT J

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NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. NO. TA-27919, REGINALD WILSON, Plaintiff v. N.C. DEPARTMENT OF PUBLIC SAFETY, Defendant.

ORDER by MARSHALL L. WRIGHT, Special Deputy Commissioner.

FILED: December 9, 2019

On 20 November 2019, this matter came before the undersigned for a pretrial hearing in Raleigh, North Carolina based upon Defendant's Motions to Dismiss, filed 22 October 2019.

APPEARANCES

Plaintiff: *Pro se*. OPUS #0639675.

Defendant: The Honorable Josh Stein, Attorney General, N.C. Department of Justice, Raleigh, North Carolina; Elizabeth Jenkins, Associate Attorney General, appearing.

* * * * * * * * * * *

The competent evidence adduced at hearing engenders the following:

FINDINGS OF FACT

1. On 14 August 2019, Plaintiff initiated this civil action by filing a *Claim for Damages Under Tort Claims Act* Affidavit ("Affidavit") with the North Carolina Industrial Commission.

2. In his Affidavit, Plaintiff alleges that on 7 June 2017, while in the custody and control of Defendant housed at Sampson Correctional Institution, he was found guilty of various disciplinary infractions. As a result, Plaintiff was assigned to Restrictive Housing for Control Purposes ("RHCP") for a period of one hundred eighty (180) days and demoted from medium to close custody status. Plaintiff alleges that his case manager, Amanda Edwards, an employee or agent of the North Carolina Department of Public Safety ("DPS"), recommended that Plaintiff remain in RHCP due to a subsequent disciplinary infraction, which Plaintiff claims he did not

commit. The Facility's Classification Committee agreed with Ms. Edwards' recommendation and Plaintiff remained in RHCP for an additional one hundred eighty (180) days. Plaintiff alleges that, as a result of the alleged negligent conduct of Ms. Edwards, he sustained damages in the amount of "more than $25,000.00."

3. On 22 October 2019, Defendant responded by filing an Answer, Affirmative Defense, Motion for Protective Order, and Motions to Dismiss.

4. Defendant moved to dismiss the action pursuant to Rule 12(b)(1) and (2) of the North Carolina Rules of Civil Procedure for lack of subject matter and personal jurisdiction on the basis that Plaintiff was attempting a collateral attack on the decisions made by DPS staff pursuant to prison policies and procedures, which is a function of the executive branch of government and ordinarily not subject to judicial oversight. Defendant also moved to dismiss pursuant to Rule 12(b)(1) and (2) on the grounds that Plaintiff was attempting a collateral challenge to his custody assignment or the conditions of his confinement. Defendant further moved to dismiss pursuant to Rule 12(b)(6) on the basis that Plaintiff's allegations, even if taken as true, are insufficient to establish negligence on the part of Defendant.

5. Pursuant to Defendant's Motions to Dismiss, the above-captioned tort claim was set for a pretrial hearing before the undersigned on 20 November 2019.

6. Plaintiff appeared at the facility, via videoconference, and spoke with the undersigned on the record. Plaintiff affirmed the allegations made in his Affidavit, namely that Ms. Edwards negligently recommended Plaintiff to remain in RHCP for a disciplinary infraction which Plaintiff alleges he did not commit.

7. The undersigned finds, taking all alleged facts in the light most favorable to Plaintiff, that Plaintiff has failed to assert a potential claim for negligence over which the Industrial Commission has subject matter jurisdiction.

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* * * * * * * * * * *

The foregoing Findings of Fact engender the following:

CONCLUSIONS OF LAW

1. N.C. Gen. Stat. § 143-291(a) (2018) confers upon the North Carolina Industrial Commission jurisdiction to hear negligence claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State.

2. Under the Tort Claims Act, "negligence is determined by the same rules as those applicable to private parties." *Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988). In order to prevail in a claim filed pursuant to this Act, a plaintiff must allege and prove "that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence" on the part of the plaintiff. N.C. Gen. Stat. § 143-291(a).

3. A defendant's motion to dismiss tests the legal sufficiency of a plaintiff's complaint by presenting the question whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief can be granted under the Tort Claims Act. *See Isenhour v. Hutto*, 350 N.C. 601, 604, 517 S.E.2d 121, 124 (1999).

4. "A complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which would be proved in support of the claim." *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 111, 229 S.E.2d 297, 300 (1976) (citations and internal quotation marks omitted).

5. Under the Tort Claims Act, the Industrial Commission has jurisdiction over causes of action for negligence only. N.C. Gen. Stat. 143-291(a). Plaintiff's assertions amount to a challenge to prison staff's decision that he should remain in RHCP for an additional one

hundred eighty (180) days as a result of Plaintiff receiving another disciplinary infraction. As the post-conviction supervision of inmates is a function of the executive branch and is not subject to judicial oversight, the Industrial Commission lacks jurisdiction, and Plaintiff's complaint must be dismissed. *Goble v. Bounds*, 281 N.C. 307, 188 S.E.2d 347 (1972).

6. Taking all alleged facts in the light most favorable to Plaintiff, as the non-moving party, the undersigned has determined that Plaintiff has failed to sufficiently state a claim for negligence over which the Industrial Commission has subject matter jurisdiction. As such, Plaintiff is not entitled to recover under the Tort Claims Act, and the above captioned tort claim is subject to dismissal with prejudice.

* * * * * * * * * * *

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

ORDER

1. Defendant's Motion to Dismiss is GRANTED and Plaintiff's above-captioned tort claim is hereby DISMISSED WITH PREJUDICE.

2. This matter is REMOVED from the active hearing docket.

3. No costs are taxed as Plaintiff was permitted to file this civil action *in forma pauperis*.

Marshall L. Wright
MARSHALL L. WRIGHT
SPECIAL DEPUTY COMMISSIONER

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rolina Department Of Adult Correction
Offender Public Information

View Offender Sentence Component

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Offender Infractions

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Offender Number: 0639675 Offender Name: REGINALD WILSON

Infraction Date	Infraction Type
03/15/2022	DISOBEY ORDER
05/22/2021	DISOBEY ORDER
05/22/2021	LOCK TAMPERING
05/06/2019	DISOBEY ORDER
05/06/2019	FIGHTING
05/22/2017	INTERFERE W/STAFF
05/22/2017	POSS AUDIO/VIDEO/IMAGE DEVICE
05/22/2017	ASSAULT STAFF W/WEAPON
04/08/2011	FIGHTING
06/24/2009	NO THREAT CONTRABAND
12/20/2008	NO THREAT CONTRABAND
11/25/2007	FIGHTING
03/17/2007	PROFANE LANGUAGE
08/28/2006	HIGH RISK ACT
07/14/2006	THEFT OF PROPERTY
05/16/2006	DISOBEY ORDER
05/01/2006	DISOBEY ORDER
05/01/2006	PROFANE LANGUAGE
11/12/2005	FIGHTING
05/11/2004	PROFANE LANGUAGE
11/15/2003	DAMAGE STATE/ANOTHERS PROPERTY
11/11/2003	DISOBEY ORDER
06/28/2003	UNAUTHORIZED LOCATION
06/28/2003	DISOBEY ORDER
10/15/2002	UNAUTHORIZED LEAVE
03/20/2002	UNAUTHORIZED LEAVE
03/15/2002	DISOBEY ORDER
03/15/2002	PROFANE LANGUAGE