

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1255

Larry David Davis

Plaintiff - Appellant

v.

Amy Jackson Douglas, Deputy Public Defender, Little Rock; William R. Simpson, Jr., Chief
Public Defender, Little Rock; Kent C. Krause, Public Defender, Little Rock

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:21-cv-00360-KGB)

JUDGMENT

Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

The motion for leave to proceed in forma pauperis has been considered and is granted. The full \$505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 10, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix A

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U.S. District Court

Eastern District of Arkansas

Notice of Electronic Filing

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Case Name: Davis v. Douglas et al

Case Number: 4:21-cv-00360-KGB

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Docket Text:

ORDER granting [1] motion for leave to proceed in forma pauperis; directing monthly payments be made from Plaintiff's prison trust account for the \$350 filing fee; directing the Clerk of the Court to send a copy of this Order to the Warden of the Delta Regional Unit of the Arkansas Division of Correction, the ADC Trust Fund Centralized Banking Office, and the ADC Compliance Office; dismissing Mr. Davis's claims without prejudice; dismissing [2] complaint without prejudice; recommending that dismissal of this action count as a "strike" within the meaning of 28 U.S.C. § 1915(g); and certifying that an in forma pauperis appeal from this Order or the accompanying Judgment would not be taken in good faith. Signed by Judge Kristine G. Baker on 1/20/2023. (jbh)

4:21-cv-00360-KGB Notice has been electronically mailed to:

4:21-cv-00360-KGB Notice has been delivered by other means to:

Larry David Davis
ADC #123330
DELTA REGIONAL UNIT
Arkansas Department of Correction
880 East Gaines Street
Dermott, AR 71638-9505

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095794525 [Date=1/20/2023] [FileNumber=9290943-0]
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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**LARRY DAVID DAVIS
ADC #123330**

PLAINTIFF

v.

Case No. 4:21-cv-00360-KGB

AMY JACKSON DOUGLAS, et al.

DEFENDANTS

ORDER

Plaintiff Larry David Davis, who is currently an inmate at the Delta Regional Unit of the Arkansas Division of Correction, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 (Dkt. No. 2). Mr. Davis sued Public Defenders Amy Jackson Douglas, William R. Simpson, and Kent C. Krause in their personal and official capacities (*Id.*, at 1-2). Mr. Davis claims his court appointed attorney provided ineffective assistance of counsel in violation of the Sixth Amendment (*Id.*, at 4-40). He seeks damages and asks that the “case of Ace liquor store” be vacated. Before the Court is Mr. Davis’s application to proceed without prepayment of fees and affidavit (Dkt. No. 1).

I. Application To Proceed Without Prepayment Of Fees

Under the Prison Litigation Reform Act (“PLRA”), a prisoner who is permitted to file a civil action *in forma pauperis* still must pay the full statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The only question is whether a prisoner will pay the entire filing fee at the initiation of the proceeding or in installments over a period of time. *Ashley v. Dilworth*, 147 F.3d 715, 716 (8th Cir. 1998). Even if a prisoner is without assets and unable to pay an initial filing fee, she will be allowed to proceed with her § 1983 claims, and the filing fee will be collected by the Court in installments from the prisoner’s inmate trust account. 28 U.S.C. § 1915(b)(4).

If the prisoner’s case is subsequently dismissed for any reason, including a determination that it is frivolous, malicious, fails to state a claim, or seeks monetary relief against a defendant

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who is immune from such relief, the full amount of the \$350.00 filing fee will be collected, and no portion of this filing fee will be refunded to the prisoner. *See* 28 U.S.C. § 1915(b)(1) (“Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.”); *see also Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (“The Prison Litigation Reform Act (PLRA) makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal. Thus, when an application to proceed in forma pauperis (IFP) is filed in such a case, ‘the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.’”) (citations omitted) (quoting *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997)).

Mr. Davis has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a) (Dkt. No. 1). Accordingly, the Court grants Mr. Davis’s motion to proceed without prepayment of fees (*Id.*). Based on Mr. Davis’s account information sheet, the Court will not assess an initial partial filing fee. Mr. Davis will be obligated to make monthly payments in the amount of 20 percent of the preceding month’s income credited to Mr. Davis’s prison trust account each time the amount in the account exceeds \$10.00 until the \$350.00 filing fee is fully paid. 28 U.S.C. § 1915(b)(2).

II. Background

In this lawsuit, Mr. Davis seeks “monetary relief” from Public Defenders Amy Jackson Douglas, William R. Simpson, and Kent C. Krause (Dkt. No. 2, at 1, 4). According to Mr. Davis, Ms. Douglas failed effectively to represent him in the Pulaski County, Arkansas, Circuit Court

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case *State v. Davis*, 60CR-18-2635 (Dkt. No. 2 at 6).¹ In *State v. Davis*, Mr. Davis was charged with multiple crimes.² Mr. Davis pled guilty to theft of property; the remaining charges against him were *nolle prossed*. In this federal civil case, Mr. Davis says Ms. Douglas “worked hand in hand with the state and maneuvered [him] into a plea . . .” (*Id.* at 25). Mr. Davis claims actual innocence (*Id.* at 3). He also asserts that: there was no probable cause for his arrest; he was denied a preliminary hearing; he was fingerprinted in violation of his constitutional rights; his right to a speedy trial was violated; and he was prosecuted in the wrong jurisdiction (*Id.* at 4-40). Mr. Davis alleges that Ms. Douglas was ineffective by failing to bring any these issues to the attention of the judge in his criminal case and by being complicit with the prosecution and judge (*Id.*).

III. Screening

The Prison Litigation Reform Act (“PLRA”) requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b). The *in forma pauperis* statute also imposes these standards for dismissal. 28 U.S.C. § 1915(e)(2)(B).

¹ To the extent that Mr. Davis seeks to raise claims of constitutional error in this case arising out of Pulaski County, Arkansas, Circuit Court, case *State v. Davis*, 60CR-18-2635, including but not limited to claims of ineffective assistance of counsel effecting his custody, the Court denies those claims because he must raise them in his pending petition for writ of *habeas corpus*. *Davis v. Payne*, Case No. 4:21-cv-462-KGB-JTK.

² See Arkansas Judiciary Website, Docket Search, <http://caseinfo.arcourts.gov>; *State v. Davis*, 60CR-18-2635.

An action is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

In reviewing the sufficiency of a *pro se* complaint under the Court’s screening function, the Court must give the complaint the benefit of a liberal construction. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The Court also must weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). Although courts are to construe liberally *pro se* complaints, the complaint must allege specific facts sufficient to state a claim. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

IV. Discussion

Mr. Davis maintains Ms. Douglas provided ineffective assistance of counsel (Dkt. No. 2). To state a claim under § 1983, a plaintiff must allege facts showing that a defendant deprived him of a federally-protected right while acting under color of state law. 42 U.S.C. § 1983. “Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Parrish v. Ball*, 594 F.3d 993, 1001 (8th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)). Factual allegations must be sufficient to “raise a right to relief above the speculative level . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

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Mr. Davis named Public Defenders Simpson and Krause as defendants, but Mr. Davis makes no specific claims against them in his complaint.³ Bare allegations void of factual enhancement are insufficient to state a claim for relief under § 1983. *See Iqbal*, 556 U.S. at 678. Because Mr. Davis did not make specific allegations against Mr. Simpson or Mr. Krause, Mr. Davis's claims against those defendants fail.

Even if Mr. Davis had made specific allegations against Mr. Simpson and Mr. Krause, Mr. Davis's claims nonetheless would fail. Defense counsel in a criminal case, whether appointed or retained, is not a state actor. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981); *Chambers v. Kaplan*, 648 F.2d 1193, 1194 (8th Cir. 1981). Rather, Mr. Davis and Mr. Simpson are private actors. To be subject to a claim under § 1983, "a private actor must be a 'willful participant in joint activity with the State' in denying plaintiff's constitutional rights." *Magee v. Trustee of Hamline University, Minn.*, 747 F.3d 532, 536 (8th Cir. 2014) (internal citation omitted). For Mr. Simpson or Mr. Krause to be subject to a § 1983 claim, Mr. Davis would have had to allege "'at the very least, that there was a mutual understanding, or a meeting of the minds, between the private party and state actor.'" *Pendleton v. St. Louis County*, 178 F.3d 1007, 1011 (8th Cir. 1999) (internal citation omitted). Because Mr. Davis did not allege facts indicating that either Mr. Simpson or Mr. Krause was a willful participant with a state actor, neither defendant is subject to suit under § 1983.

Mr. Davis did allege that Ms. Douglas, also a defense attorney, was complicit with the prosecutors and judge in his case. For example, Mr. Davis claims he was "prejudice[d] by [his] lawyer misleading [him] and working with the police Ryan Childress and the prosecutor, and the

³ The Court notes that throughout his complaint, Mr. Davis consistently referred to his court-appointed counsel as "she." This leads the Court to conclude that Mr. Davis's allegations throughout his complaint are against Ms. Douglas.

Judge against [his] 4th Amendment right of the United State[s] Constitution” (Dkt. No. 2, at 15). Mr. Davis further maintains Ms. Douglas “worked hand in hand with the state and maneuvered [him] into a plea.” (*Id.*, at 25). Additionally, Mr. Davis asserts that Ms. Douglas, “the judge, and prosecution used a[n] Amended Sentencing order as leverage in retaliation to me failing a 1983 on my trial errors . . .” (*Id.*, at 38). Mere allusion to a conspiracy, however, is insufficient to establish a meeting of the minds between a private actor and state actor. *Magee*, 747 F.3d at 536. Mr. Davis has not provided any factual support for his claim that Ms. Douglas was complicit with the prosecution or judge in his state criminal case. *See Id.* Accordingly, Ms. Davis is not subject to suit under § 1983.

To the extent Mr. Davis also makes a state-law malpractice claim, this Court may decline to exercise supplemental jurisdiction over that claim if no live federal claims remain in this case. 28 U.S.C. § 1367. “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine . . . will point towards declining to exercise jurisdiction over the remaining state-law claims.” *King v. City of Crestwood, Missouri*, 899 F.3d 643, 651 (8th Cir. 2018) (internal citation omitted). Having already determined that Mr. Davis’s federal claims must be dismissed, the Court declines to retain jurisdiction over Mr. Davis’s state-law claim.

V. Conclusion

1. Mr. Davis’s motion for leave to proceed *in forma pauperis* (Dkt. No. 1) is granted.
2. As Mr. Davis’s present custodian, the Warden of the Delta Regional Unit, or his designee, or any future custodian, is directed to collect from Mr. Davis’s institutional account the \$350.00 filing fee by collecting monthly payments equal to 20% of the preceding month’s income credited to Mr. Davis’s account each time the amount in the account exceeds \$10.00. The Warden

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of the Delta Regional Unit or his designee, or any future custodian, is further directed to forward the payments to the Clerk of the Court in accordance with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk. The payments also must be clearly identified by the name and number assigned to this action.

3. The Clerk of the Court is directed to send a copy of this Order to the Warden of the Delta Regional Unit of the Arkansas Division of Correction, 880 East Gaines Street, Dermott, Arkansas 71638; the ADC Trust Fund Centralized Banking Office, P.O. Box 8908, Pine Bluff, Arkansas 71611; and the ADC Compliance Office, P.O. Box 20550, Pine Bluff, Arkansas 71612.

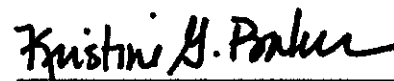
4. Mr. Davis's claims are dismissed without prejudice.

5. Mr. Davis's complaint (Dkt. No. 2) is dismissed without prejudice.

6. The Court recommends that dismissal of this action count as a "strike" within the meaning of 28 U.S.C. § 1915(g).

7. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order or the accompanying Judgment would not be taken in good faith.

So ordered this 20th day of January, 2023.



Kristine G. Baker
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**LARRY DAVID DAVIS
ADC #123330**

PLAINTIFF

v.

Case No. 4:21-cv-00360-KGB

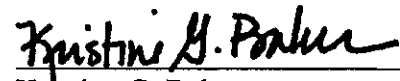
AMY JACKSON DOUGLAS, et al.

DEFENDANTS

JUDGMENT

Pursuant to the Order filed on this date, it is considered, ordered, and adjudged that plaintiff Larry David Davis's complaint is dismissed without prejudice (Dkt. No. 2). The relief sought is denied. Dismissal of this action counts as a "strike" within the meaning of 28 U.S.C. § 1915(g), and the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an *in forma pauperis* appeal taken from the Order and Judgment dismissing this action is considered frivolous and not in good faith.

So adjudged this 20th day of January, 2023.



Kristine G. Baker
United States District Judge

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