

NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES

JUSTIN DALCOLLO - PETITIONER

- v -

ANTHONY WELLS ET AL - PETITIONER

APPENDIX AND

EXHIBITS

Justin Dalcollo

751682

10938 Lawrence Rd

Sumner IL, 62466

(LAW. C.C.)

(APPENDIX A)

18th JUDICIAL CIRCUIT COURT DUPAGE COUNTY, ANN WALSH :
5/4/2021 CONVICTION VACATED; 5/4/21 APPOINTMENT OF COUNSEL DENIED;

18th JUDICIAL CIRCUIT COURT DUPAGE COUNTY, ANN WALSH; FORCED TO PROCEED
TO TRIAL.

(N.D.C. III) FILED PETITION FOR WRIT OF HABEAS; INFORMA-
PAUPERIS APP. FILED; DISMISSAL FOR FAILURE TO PAY FEE (MAIL FRAUD
THE PEOPLE, JOSC APPLICATION AND FEE FROM MAEL.

18th JUDICIAL CIRCUIT COURT DUPAGE COUNTY, ANN WALSH :
12/6/22 TRIAL; 12/13/22 VERDICT GUILTY RENDERED. APPEAL
FILED; APPEAL REFILED 5/4/22 AND 5/11/22 APPOINTMENT OF COUNSEL.

(N.D.C. III) 5/25/22 §1983 CIVIL RIGHTS COMPLAINT. SHORTLY
DISMISSED WITHOUT LEAVE TO AMEND (APPEAL IMPEDED) -

(S.D.C. III) LETTER E-FILED INSTEAD OF RECEIVED AS INTENDED
3/9/23; DISMISSED AFTER AMENDED; RULE 59(c) AND (d) FILED

(S.D.C. III) RULE 59(c) DENIED.
8/30/23 (APP. FILED).

8/30/23 APPEAL FILED INFORMA PAUPERIS GRANTED:

2/20/24 APPEAL DENIED-DISMISSED;

(S.D.C. III)

(S.D.C. III) DEFAULT JUDGEMENT FILED; 2/9/24 DISMISSED
(REHEARING - PENDING CURRENTLY)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

February 9, 2024

By the Court:

No. 23-2348	JUSTIN L. DALCOLLO, Plaintiff - Appellant v. ANTHONY WILLS, et al., Defendants - Appellees
Originating Case Information: District Court No: 3:23-cv-00828-SPM Southern District of Illinois District Judge Stephen P. McGlynn	

Upon consideration of the **MOTION FOR DEFAULT JUDGMENT**, filed on February 8, 2024,
by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**.

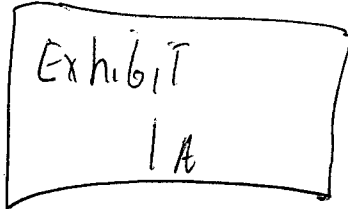
NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604



Submitted February 16, 2024*

Decided February 20, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2348

JUSTIN L. DALCOLLO,
Plaintiff-Appellant,

v.

ANTHONY WILLS, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 23-cv-000828-SPM

Stephen P. McGlynn,
Judge.

ORDER

Justin Dalcollo, a prisoner at Lawrence Correctional Center in Illinois, has sued over two dozen prison staff to challenge prison conditions, his allegedly wrongful conviction, and other asserted acts. *See* 42 U.S.C. § 1983. The district court screened and properly dismissed his amended complaint for failure to state a claim; we thus affirm.

* The defendants were not served with process and are not participating in the appeal. We have agreed to decide the case without oral argument because the appellant's brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Dalcollo's amended complaint is unclear but appears to seek relief based on three broad categories. First, he contests his prison conditions. He asserts that prison staff have celled him with officers who intend to kill him, forced him to take estrogen, denied him law library access, and impeded him from filing grievances. Second, he alleges that he was wrongly tried and convicted, and as a result, is enslaved in violation of his civil rights. Finally, he asserts that the defendants have tampered with witnesses, obstructed justice, bribed officials, embezzled federal funds, and trafficked humans. The only allegations that Dalcollo appears to tie to the defendants concern his conviction.

The district court dismissed Dalcollo's original complaint for failure to state a plausible claim for relief, gave Dalcollo leave to amend it, and when the amended complaint did not cure the defect, the court dismissed it as well. *See* 28 U.S.C. § 1915(e)(2). The court observed that, for the majority of the allegations in the amended complaint, Dalcollo did not attribute them to any particular defendant or state when or where the alleged incidents occurred; he thus denied the defendants fair notice of the claims. For the allegations that Dalcollo tied to the defendants, the court ruled that they appeared to contest Dalcollo's underlying, intact conviction; thus a claim for damages arising from it was blocked by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1993).

Dalcollo raises no cogent argument on appeal; as a result, we could dismiss his appeal. *See Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001); FED. R. APP. P. 28(a)(8)(A). But we prefer to decide cases on the merits when we can, and we do so here. *See Boutros v. Avis Rent A Car Sys., LLC.*, 802 F.3d 918, 924 (7th Cir. 2015).

We review a dismissal based on lack of fair notice for abuse of discretion, *see Stanard v. Nygren*, 658 F.3d 792, 796–97 (7th Cir. 2011), and the district court did not abuse its discretion here. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” The primary purpose of this requirement “is to give defendants fair notice of the claims against them and the grounds supporting the claims.” *Stanard*, 658 F.3d at 797. Dalcollo's amended complaint, the district court reasonably ruled, fails to meet this requirement: By raising wide-ranging allegations without attributing them to any defendant, Dalcollo deprived the defendants of fair notice of what he accused them of doing, despite having received a chance to cure this defect. Without a “plain statement” of a claim, Dalcollo failed to state a claim for relief. *See Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 469 (7th Cir. 2020).

Exhibit 1C

No. 23-2348

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The district court also properly dismissed Dalcollo's wrongful-imprisonment claim. Although Dalcollo ties this claim to the defendants, the relief he seeks is not now available. An award of damages would necessarily imply the invalidity of his intact conviction, and under *Heck*, he may not pursue a claim for damages unless and until his conviction has been set aside or invalidated. *Heck*, 512 U.S. at 486-87. And if Dalcollo seeks release from state prison, he must file a proper petition for collateral relief, *see* 28 U.S.C. § 2254, and comply with the procedural and exhaustion requirements, rather than invoke § 1983, *see Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

For purposes of future proceedings under 28 U.S.C. § 1915A, this affirmance for failure to state a claim is a "strike" under 28 U.S.C. § 1915(g).

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

December 20, 2023

By the Court:

No. 23-2348	JUSTIN L. DALCOLLO, Plaintiff - Appellant v. ANTHONY WILLS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:23-cv-00828-SPM Southern District of Illinois District Judge Stephen P. McGlynn	

A review of the court's docket shows that on August 30, 2023, the clerk received the appellant's opening brief and accepted it for filing. This appeal is proceeding to a decision on the merits.

form name: c7_Order_BTC (form ID: 178)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JUSTIN DALCOLLO,
#Y51682,**

Plaintiff,

v.

ANTHONY WILLS, *et al.*,

Defendants.

Case No. 23-cv-00828-SPM

MEMORANDUM AND ORDER

MCGLYNN, District Judge:

This matter is before the Court on a motion to alter or amend the judgment filed by Plaintiff Dalcollo. (Doc. 23). For the following reasons, the motion is denied.

BACKGROUND

Plaintiff, an inmate of the Illinois Department of Corrections, initiated this civil action by filing a complaint on March 9, 2023. (Doc. 1). The Court reviewed the Complaint pursuant to 28 U.S.C. § 1915A and found that Plaintiff had failed to state a claim for relief. (Doc. 9). The Court observed that the Complaint was a generalized list of grievances regarding various aspects of Plaintiff's confinement at Lawrence Correctional Center ("Lawrence") and that Plaintiff had not properly identify any individual defendants. The Court also noted that the Complaint appeared to violate the rules of joinder by including all of Plaintiff's alleged violations that occurred at Lawrence into a single complaint. The Court dismissed the Complaint without prejudice and granted Plaintiff leave to amend. Plaintiff was given instructions on how to plead a successful claim in accordance with Federal Rule of Civil Procedure 8. Specifically, Plaintiff was advised that generally a successful complaint alleges the who, what, when, where, and how and should

include descriptions of how individuals violated his rights. (*Id.* at p. 3). Finally, to the extent Plaintiff was seeking emergency injunctive relief in the Complaint, the requests were denied.

Plaintiff then filed a First Amended Complaint and several motions – a motion for copies, a motion for preliminary injunction, a motion for emergency injunctive relief, a motion for writ of habeas corpus, a motion for temporary restraining order, a motion requesting medical attention, a motion to inform the Court, and two supplements. (Doc. 10-18, 20).

The Court again found that the First Amended Complaint failed to state a claim. (Doc. 21). Plaintiff's claims regarding unlawful treatment while incarcerated were not asserted against any named defendants, and he did not explain where or when the alleged constitutional violations occurred. The only allegations that were associated with individual defendants appeared to be challenging his underlying criminal conviction. The Court dismissed these claims as barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), as Plaintiff had not pled or provided information from which the Court could infer that his conviction had been overturned. Accordingly, the First Amended Complaint was dismissed. The Court found that allowing Plaintiff additional opportunities to amend would be futile, and so, the First Amended Complaint and this entire case were dismissed with prejudice. The Clerk entered judgment, and this case was closed on May 17, 2023.

Plaintiff then filed a motion to alter or amended judgment, a motion to certify class, a motion for leave to file a second amended complaint, and a motion to admit additional exhibits. (Doc. 23-30). Before the Court could rule on the pending motions, Plaintiff filed a notice of appeal on June 15, 2023. (Doc. 26).

MOTION TO ALTER OR AMEND JUDGMENT

Because Plaintiff has filed a notice of appeal, there are jurisdictional concerns that must be resolved before the Court can address the merits of any of the pending motions. Generally, an

appeal divests a district court of jurisdiction over the case. *See United States v. Woodard*, 744 F.3d 488, 495 (7th Cir. 2014) (“There is a general rule that an appeal suspends the power of the court below to proceed further in the cause.”). But the Federal Rules of Appellate Procedure provide for exceptions to this rule when a party prematurely files a notice of appeal after the district court has entered judgment, but before the court has acted on a timely post-judgment motion under Federal Rules of Civil Procedure 50(b), 52(b), 54, 59, or 60. *See* FED. R. APP. P. 4(a)(4)(B)(i). In this event, the notice of appeal is effectively suspended until the district court disposes of the motion. *See Id.* Consequently, the Court finds that it has jurisdiction to decide the motion to alter or amend the judgment despite Plaintiff’s notice of appeal.

Rule 59(e) allows a court to alter or amend a judgment in order to correct manifest errors of law or fact or to address newly discovered evidence. *Obrieht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). Plaintiff’s main argument is that he has newly discovered evidence that will provide proof of his claims as to the prison conditions he is experiencing. Plaintiff states that the Court has not previously received these exhibits because his ability to seek relief through the grievance process and the courts is being impeded. A few days after Plaintiff filed the motion to alter or amend the judgment, Plaintiff filed a motion to admit additional exhibits that includes over a hundred pages of documents. (Doc. 30).

The Court finds that the newly discovered evidence referenced by Plaintiff is not grounds for altering or amending the judgment. Even assuming that Plaintiff was prevented in some way from previously filing exhibits with the Court,¹ exhibits are not required under the Federal Rules of Civil Procedure when filing a complaint and generally are not necessary at the pleading stage. Neither is Plaintiff required to “prove” his claims as he asserts. The Court did not dismiss the

¹ The Court notes that despite Plaintiff claiming that his “documents are not being sent to the courts at all,” this Court has received two complaints, a notice of change of address, thirteen motions, and two supplements since March 9, 2023.

Complaint, the First Amended Complaint, and this entire case because of a lack of proof but because Plaintiff's allegations themselves were insufficient to allow the Court to reasonably infer that the named defendants were liable for the misconduct alleged. *See* FED. R. CIV. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). After failing a second time to state a claim, the Court found that allowing Plaintiff further attempts to amend would be futile. Thus, newly discovered evidence does not have any impact on the Court's judgment in this case. The motion to alter or amend the judgment is denied. (Doc. 23).

The motion to certify class, the motion for leave to file second amended complaint, and the motion to admit additional exhibits are denied as moot. (Doc. 24, 25, 30).

DISPOSITION

For the reasons stated above, the motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e) is **DENIED**. (Doc. 23). The motion to certify class, motion for leave to file second amended complaint, and motion to admit additional exhibits are **DENIED as moot**. (Doc. 24, 25, 30).

IT IS SO ORDERED.

DATED: June 26, 2023

s/Stephen P. McGlynn
STEPHEN P. MCGLYNN
United States District Judge