

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-3358

Brandan C. Bellamy

Plaintiff - Appellant

v.

Chanse Houghton, Officer, Trenton Police Department; Michael Allen Williams, Officer,
Trenton Police Department

Defendants - Appellees

Trenton, Missouri, Police Department; Kelly W. Puckett, Grundy County Prosecuting Attorney;
Wright Memorial Hospital, Saint Lukes Health System

Defendants

Appeal from U.S. District Court for the Western District of Missouri - St. Joseph
(5:23-cv-06093-FJG)

CORRECTED JUDGMENT

Before COLLOTON, GRUENDER, and KELLY, Circuit Judges.

The 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).

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.

The motion for appointment of counsel is denied as moot.

APPENDIX A

February 02, 2024

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

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

BRANDAN CHARLES BELLAMY,)
)
Plaintiff,)
)
CHANSE HOUGHTON, et al.,)
)
Defendants.)

Case No. 23-06093-CV-SJ-FJG-P

ORDER

Plaintiff, who is currently confined at the Grundy County Detention Center in Trenton, Missouri, has filed pro se this civil action pursuant to 42 U.S.C. § 1983. Plaintiff has moved for leave to proceed *in forma pauperis* without the prepayment of court fees or costs. He has submitted an affidavit of poverty in support thereof. As set forth below, if Plaintiff wishes to proceed with this case, he first must pay an initial partial filing fee and file an amended complaint on or before the deadline set forth below.

I. Plaintiff must pay an initial partial filing fee

Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff must pay the full \$350 filing fee in this civil action. *See In re Tyler*, 110 F. 3d 528, 529-30 (8th Cir. 1997) (under Prison Litigation Reform Act, prisoners are responsible for filing fees the moment a civil action is filed). If granted leave to proceed *in forma pauperis*, Plaintiff is entitled to pay the filing fee over time through the payment of an initial partial filing fee to be assessed by the court under 28 U.S.C. § 1915(b)(1) and/or through periodic payments from Plaintiff's inmate trust fund account as authorized in 28 U.S.C. § 1915(b)(2).

Pursuant to 28 U.S.C. § 1915(b)(1), the court is required to assess and, when funds exist, collect an initial partial filing fee of twenty percent of the greater of the average monthly deposits or the average monthly balance in the prisoner's account for the six months immediately preceding the date of the filing of a civil action. Having reviewed Plaintiff's inmate account statement, Plaintiff will be required to pay an initial partial filing fee of **\$10.50** (\$315 total deposits ÷ 6 months x 20 %). *If Plaintiff pays the initial partial filing fee and submits his superseding amended complaint as set forth below, the remainder of the \$350 filing fee will be collected through*

APPENDIX B

automatic periodic deductions from Plaintiff's inmate account pursuant to § 1915(b)(2).

II. Plaintiff must also submit an amended complaint¹

Due to insufficiencies in Plaintiff's present complaint, Plaintiff also must file an amended complaint as set forth below. Plaintiff names the following Defendants in this case: (1) Officer Chanse Houghton; (2) Officer Michael Williams; (3) Prosecutor Kelly Puckett; (4) Wright Memorial Hospital; and (5) Trenton Missouri Police Department.

While difficult to discern, Plaintiff appears to allege that Defendants Chanse and Houghton wrongfully arrested Plaintiff, used excessive force, denied him counsel, and caused medical staff at the Wright Memorial Hospital to unlawfully draw blood and obtain a urine sample. Plaintiff alleges that the Wright Memorial Hospital unlawfully disclosed confidential medical information to the prosecution, and that Defendant Puckett engaged in misconduct in connection with his ongoing state court proceedings. For relief, Plaintiff requests monetary damages, and asks this Court to order his probation reinstated and to direct Defendant Puckett to dismiss his pending charges.

As currently pled, Plaintiff's allegations fail to state a cognizable claim for relief under § 1983. Initially, the Court notes that Plaintiff appears to bring multiple claims against multiple parties and the claims do not clearly arise out of the same transaction or occurrence. For example, Plaintiff's claims of excessive force against Defendants Chanse and Houghton, his allegations against Wright Memorial Hospital, and his allegations of prosecutorial misconduct against Defendant Puckett do not appear at this time to share a common question of law or fact. This is not allowed under Federal Rules of Civil Procedure 18(a) and 20(a)(2).²

Even if Plaintiff's claims were properly joined, many of them fail to state a claim. To state a claim under § 1983, "a plaintiff must plead that each Government official defendant, through the official's own individual actions, has violated the Constitution."³ *Ashcroft v. Iqbal*, 556 U.S.662, 676 (2009). A defendant must have been personally involved in the deprivation of Plaintiff's rights

¹ Included within this section are some of the allegations Plaintiff asserts in his complaint. Docs. 1, 1-1.

² Rule 18(a) of the Federal Rules of Civil Procedure states, "A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party."

Rule 20(a)(2) of the Federal Rules of Civil Procedure allows for joinder of defendants if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and . . . any question of law or fact common to all defendants will arise in the action."

to be liable, *Martin v. Sergeant*, 780 F.2d 1334, 1337 (8th Cir. 1985), and pleadings must offer more than labels and conclusions; formulaic recitations of the elements of a cause of action are not sufficient. *Iqbal*, 556 U.S. at 678. Furthermore, a supervisor's "mere knowledge of his subordinate's" illegal acts is an insufficient basis for § 1983 liability. *Id.* at 677. Claims based on a theory of *respondeat superior* are not actionable under § 1983. *See id.* at 676 (vicarious liability is inapplicable to § 1983 suits); *see also Pembaur v. City of Cincinnati*, 475 U.S. 469, 478 (1986); *Monell v. Department of Social Servs. of City of New York*, 436 U.S. 658, 691 (1978).

Insofar as Plaintiff brings suit against the Trenton Missouri Police Department, the Court notes that the complaint provides to factual allegations of wrongdoing on its part. Again, to be cognizable under § 1983, a claim must allege that the defendant was personally involved in or directly responsible for the incidents that deprived the plaintiff of his constitutional rights. *Martin*, 780 F.2d at 1338. Here, there are no allegations of how the Trenton Missouri Police Department is causally linked to or bore any personal responsibility for a civil rights violation against Plaintiff.

His claims are also frivolous against the Trenton Missouri Police Department because municipal departments cannot be held liable under § 1983. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (police departments are not suable entities because they are subdivision of city government). In addition, the complaint fails to state an actionable claim under *Monell*, 436 U.S. at 690-91, as would be necessary to substitute the municipality as a defendant. For these reasons, this defendant is subject to dismissal.

Next, it appears that Plaintiff may be seeking to hold Wright Memorial Hospital vicariously liable for some allegedly wrongful act or omission by its medical employees. Such a claim, however, is not actionable, because, as explained above, governmental officials and entities cannot be held liable under the doctrine of *respondeat superior* in § 1983 cases. *See Monell*, 436 U.S. at 694. To state an actionable § 1983 claim against a government official or entity, the complaint would have to include factual allegations showing how that particular party directly caused a violation of the plaintiff's constitutional rights. Because no such allegations against Wright Memorial Hospital appear in Plaintiff's complaint, he fails to state any § 1983 claim against this defendant.

As to Plaintiff's claims against Defendant Puckett, the prosecuting attorney in his state court proceedings, even if Plaintiff's claims were not legally frivolous, this Court must abstain from hearing this action as a result of Plaintiff's ongoing state criminal action pursuant to the

doctrine set forth in Younger v. Harris, 401 U.S. 37, 53-54 (1971). See Lemicy v. Martin, No. 4:15-CV-1383 CAS, 2015 WL 7889631, at *2.

“In *Younger*, 401 U.S. at 46, the Supreme Court directed federal courts to abstain from hearing cases where ‘the action complained of constitutes the basis of an ongoing state judicial proceeding, the proceedings implicate important state interests, and an adequate opportunity exists in the state proceedings to raise constitutional challenges.” *Id.* (quoting *Harmon v. City of Kansas City, Mo.*, 197 F.3d 321, 325 (8th Cir. 1999); *see also Fuller v. Ulland*, 76 F.3d 957, 959 (8th Cir. 1996)). Having carefully reviewed the case at bar, the Court concludes that the *Younger* criteria are satisfied and that abstention from this matter is required.

Further, insofar as Plaintiff asks this Court to prohibit the state prosecutor from enforcing state criminal laws against him, such an application for mandamus, or for an injunction against state court actors enforcing state laws against a petitioner, is legally frivolous.

“This Court is authorized to issue writs of mandamus or other extraordinary writs only in aid of its jurisdiction, either existing or potential.” *Lemicy*, 2015 WL 7889631, at *3 (citing 28 U.S.C.A. § 1651(a); *Middlebrooks v. Thirteenth Judicial Dist. Circuit Court, Union County*, 323 F.2d 485, 486 (8th Cir. 1963)). “The actions of the defendant prosecutor in this case are not within the jurisdiction of this Court.” *Id.* (citing *See Middlebrooks*, 323 F.2d at 486; *Veneri v. Circuit Court of Gasconade Co.*, 528 F. Supp. 496, 498 (E.D. Mo. 1981) (federal courts have no superintending control over, and are without authority to issue writ of mandamus to direct, state court or its judicial officers in performing duties).

Finally, to the extent Plaintiff seeks to bring a § 1983 claims against any named defendant regarding their participation in the revocation of Plaintiff's probation, such allegations fail to state claim.

“In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court determined that where a judgment in favor of the plaintiff would necessarily implicate the validity of the plaintiff's conviction or the length of his sentence, a cause of action under § 1983 is not cognizable unless the plaintiff can show that his underlying ‘conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus.”²²) *Parnell v. Thacker*, No. 1:18-CV-258-JMB, 2019 WL 691674, at *3 (E.D. Mo. Feb. 19, 2019), *aff'd*, No. 19-1680, 2019 WL 4803648 (8th Cir. Aug. 6, 2019) (quoting *Heck*, 512 U.S. at 487).

“Heck applies to ... probation and parole revocation proceedings.” *Id.* (quoting *Jackson v. Vannoy*, 49 F.3d 175, 177 (5th Cir. 1995), *cert. denied*, 516 U.S. 851 (1995)). Consequently, in a § 1983 suit, Plaintiff “may not question the validity of the confinement resulting from a parole revocation hearing if he does not allege that the parole board’s decision has been reversed, expunged, set aside, or called into question.” *Id.* (citing *Littles v. Bd. of Pardons and Paroles Div.*, 68 F.3d 122, 123 (5th Cir. 1995)). Here, Plaintiff has not alleged that any of the decisions regarding his parole status have been reversed, expunged, set aside or called into question. As a result, Plaintiff allegations are not cognizable under § 1983 pursuant to Heck.³

For the foregoing reasons, Plaintiff’s present complaint is not in compliance with the Federal Rules of Civil Procedure and raises many allegations that fail to state a cognizable claim for relief. Because Plaintiff is proceeding pro se and *in forma pauperis*, the Court will give him an opportunity to file an amended complaint in this action to clarify his claims and put them in compliance with the Federal Rules of Civil Procedure. *In so doing, Plaintiff should select the transaction or occurrence he wishes to pursue, in accordance with Rules 18 and 20 of the Federal Rules of Civil Procedure, and file an amended complaint, limiting his facts and allegations to the defendant(s) involved in said occurrence.* Plaintiff should only include in his amended complaint those claims that arose out of the same transaction or occurrence, or simply put, claims that have some relation to each other. See Fed. R. Civ. P. 20(a)(2). *Alternatively, Plaintiff may choose to set forth as many claims he has against a single individual that have some relation to each other.* See Fed. R. Civ. P. 18(a). He may join defendants only if appropriate.

In his amended complaint, Plaintiff shall set out sufficient facts to show exactly who is involved in this lawsuit and what each individual defendant specifically did or failed to do in violation of Plaintiff’s federally protected rights. Plaintiff shall provide sufficient allegations of fact to support his claims. Plaintiff also shall explain any injuries he suffered as a result of any

³ The Court further notes,

if a prisoner is granted parole and released, violates the conditions of his parole, has his parole revoked, and is sent back to prison, he may seek relief via § 2254, but he must first exhaust his state court remedies. A Missouri prisoner must exhaust his state court remedies by challenging his parole decision via one of these three avenues provided by Missouri law: by bringing a declaratory action against the Board, by filing a state petition for habeas corpus, or by filing a petition for writ of mandamus. *Wayne v. Mo. Bd. of Prob. and Parole*, 83 F.3d 994, 996-97 (8th Cir. 1996).

Parnell, 2019 WL 691674, *3.

Defendant's actions. Any claims or defendants not specifically set forth in the amended complaint will be deemed to have been abandoned in this case.

Plaintiff's amended complaint must encompass the allegations from his original complaint with any proposed amendments – *in one complete document and must not use exhibits to be how he asserts his claims*. See e.g., Doc. 1-1 at 2-4. The proposed amended complaint will be a standalone document, and it may not refer back to the original complaint. Accordingly, the Clerk is directed to send Plaintiff a court-approved complaint form. Using the court-approved complaint form, and following all instructions on that form, Plaintiff is to file a proposed amended complaint in which he lists the defendants he wishes to sue and explains briefly how those defendants may have violated his legal rights.

If Plaintiff seeks to proceed with this case, he must pay an initial partial filing fee and file a superseding amended complaint, or this case will be dismissed pursuant to Fed. R. Civ. P. 41(b) without further notice.

III. Conclusion

For the foregoing reasons, it is **ORDERED** that:

- (1) Plaintiff is granted provisional leave to proceed *in forma pauperis*;
- (2) Plaintiff shall pay to the clerk of the court for the Western District of Missouri, Western Division, an initial partial filing fee of \$10.50;
- (3) the Clerk of the Court is directed to send Plaintiff another set of civil rights forms for his use in filing an amended complaint;
- (4) Plaintiff is directed to file a single superseding amended complaint, as specifically discussed herein; and
- (5) Plaintiff's failure to both pay the required initial partial filing fee and amend as directed, on or before **September 8, 2023**, will result in the dismissal of this case without further notice.

/s/ Fernando J. Gaitan, Jr.
FERNANDO J. GAITAN, JR., JUDGE
UNITED STATES DISTRICT COURT

Dated: August 11, 2023.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

BRANDAN CHARLES BELLAMY,

Plaintiff,

vs.

CHANSE HOUGHTON, et al.,

Defendants.

Case No. 23-CV-06093-SJ-FJG-P

ORDER

Plaintiff, a pretrial detainee confined at the Grundy County Detention Center in Trenton, Missouri, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. For the reasons explained below, this case is **DISMISSED without prejudice**.

Standard

As the Court has determined that Plaintiff qualifies to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court “shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term “frivolous” in this context “embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.*; see also *Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as “frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations”).

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. See *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A “pro se complaint must be liberally construed, and ‘pro se litigants are held to a lesser pleading standard than other parties.’” *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted).

APPENDIX C

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 02/12/2024

Case Name: Brandan Bellamy v. Chanse Houghton, et al
Case Number: 23-3358

Docket Text:

PETITION for rehearing by panel filed by Appellant Brandan C. Bellamy w/service by USCA8 02/14/2024 [5363399] [23-3358]

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

Document Description: Petition for Rehearing

Notice will be mailed to:

Brandan C. Bellamy
WESTERN RECEPTION & DIAGNOSTIC CENTER
22-13092
3401 Faraon Street
Saint Joseph, MO 64506-0000

Notice will be electronically mailed to:

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3358

314-244-2400

Brandan C. Bellamy

Appellant

v.

Chanse Houghton, Officer, Trenton Police Department and Michael Allen Williams, Officer,
Trenton Police Department

Appellees

Trenton, Missouri, Police Department, et al.

Appeal from U.S. District Court for the Western District of Missouri - St. Joseph
(5:23-cv-06093-FJG)

ORDER

The petition for rehearing by the panel is denied.

March 13, 2024

Petition 90 days
writ of certiorari

Supreme Court, NE
1st Street, Northeast

Washington DC 20543

202-479-3000

9-5:30 3011 clerk ←

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

/s/ Michael E. Gans

APPENDIX E

Time - 15:33:36 Non-DOC Det/Loc MULES Hits/Det Withdrawn Date - 2/28/24

Institution: WESTERN RECEPTION & DIAGNOSTIC CORR Date: 10/18/2023

To: BELLAMY, BRANDON C. Assigned: WRDCC DOC ID: 01113169
Detainer Type: Missouri

Detainer Special Information or Comments

CASE# 22AG-CR00241 WARRANT# 22-AGARW-92
PROP DAMAGE 1ST DEG-L/E OR RELATIVE(F/D); ASSAULT-3RD DEG-SPEC VICTIM (F/D)
RESISTING/INTERFERING WITH ARREST, DETENTION OR STOP (M/A)
PEACE DISTURBANCE, SECORD OR SUBSEQUENT OFFENSES (M/A)

Detainer Interview Date: 10/20/2023

Detainer Withdrawn Date & Reason: 02/28/2024 NOLLE PROSEQUI

DETAINER, HERETOFORE PLACED AGAINST THE ABOVE NAMED INMATE IN FAVOR OF

Law Agency: GRUNDY COUNTY SHERIFF'S DEPARTMENT

Authority: RODNEY W. HERRING

Title: SHERIFF

Phone Number: 660-359-2828 Fax: 660-359-3761 Ext:

Address: GRUNDY CTY SHERIFF'S DEPT 610 MAIN

City: TRENTON State: MO Zip Code: 64683

County: GRUNDY

EFFECTIVE DATE: 02/28/2024 IS WITHDRAWN

RECORDS OFFICER SIGNATURE

DATE

P. Ham 136739

02-28-24

Original: S & J

CC: CO Parole Office Via IPO

Class File

Inmate

Unit

Trenton Police Department

610 Main Street, Trenton, MO 64683

Offense / Incident Report

Report Date: 10/07/2022 0310	Type of Incident: PEACE DISTURBANCE 1ST OFFENSE	Complaint No.: 2022-023259	Case Status: ACTIVE		
ID Number [REDACTED]		Date / Time 10/07/2022 0723	Subject Type PROPERTY	Image / Attachment Type: DIGITAL CAMERA - JPG	Scanned <input type="checkbox"/>
Name TPD3		Description			
Taken Date / Time: 10/07/2022 0715		Agency: DEPARTMENT PHO1	Image Captured By	Original File Name: E:\DCIM\100CANON\IMG_9743.JPG	

Offense / Incident Narrative

On 10/07/2022 at approximately 0111 hours, Officer Mike Williams and I, Officer Chanse Houghton, were dispatched to Princeton Road in reference to a man standing in the middle of the road yelling and screaming.

At approximately 0113 hours, Officer Williams and I arrived at 2306 Princeton Road, and observed a white male, who we knew to be Brandon Bellamy, laying in the road just east of the Princeton Road/East 22nd Street intersection. Officer Williams and I had dealt with Brandon earlier that night (See Supplemental), and he was much more incoherent than he was approximately 2 hours prior.

Officer Williams and I attempted to talk to Brandon, but he continued to lay in the road, holding an electric razor up in the air while speaking gibberish. We gave Brandon numerous opportunities to get up and go back home, but each time he wouldn't even acknowledge our presence. Finally, at approximately 0118 hours, Brandon was handcuffed and put into the back of my patrol car (Beginning Mileage: 5169). As we were attempting to handcuff Brandon, he began to resist, and when he was finally put into the back of my patrol car, he began to kick repeatedly, so we applied leg restraints as well. It should be noted, Brandon kicked me in the left and right hand along with my left elbow. Furthermore, while Brandon was resisting arrest and failing to enter the patrol car (TPD-3), the vehicle sustained scratches behind the rear passenger door. Brandon also scratched the film on the back window and a plastic piece with his toenails as he was kicking.

At approximately 0125 hours, we arrived at detention where we were met by Detention Officer Brandon Flowers. Detention Officer Flowers stated that Brandon needed to be medically cleared before he could be released into their custody. At approximately 0129 hours, we cleared detention and transported Brandon to Wright Memorial Hospital.

At approximately 0131 hours, we arrived at Wright Memorial Hospital (Ending Mileage 5175). Brandon was removed from my patrol car, placed into a wheelchair, and wheeled into the emergency room. Officer Williams and I held Brandon down until he was sedated. At that time, the handcuffs were removed from Brandon. At approximately 0300 hours, I cleared Wright Memorial

Reporting Officer 106 OFFICER CHANSE HOUGHTON	Approving Officer (1) (Cover Pages Only)
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**Additional material
from this filing is
available in the
Clerk's Office.**