

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 16 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GILBERT CAMPA,

Plaintiff - Appellant,

v.

INGRID ROSENQUIST and MICKEY
ECKHART,

Defendants - Appellees.

No. 23-2660

D.C. No.

1:22-cv-00128-SPW

District of Montana, Billings

ORDER

The district court's judgment was entered on the docket on August 29, 2023.

Appellant's notice of appeal was dated September 29, 2023, and received by the district court on October 2, 2023. Accordingly, the record suggests that this court may lack jurisdiction over this appeal because the notice of appeal was not filed or delivered to prison officials within 30 days after entry of the district court's judgment. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 4(c); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *Houston v. Lack*, 487 U.S. 266, 270 (1988) (notice of appeal deemed filed when it was delivered to prison authorities for forwarding to the court). The record does not reflect that appellant has filed a motion in the district court to extend or reopen the time to appeal. *See* Fed. R. App. P. 4(a)(5), (6), and 26(b)(1).

Within 21 days after the date of this order, appellant must either move for voluntary dismissal of the appeal, or file a statement showing cause why it should not be dismissed for lack of jurisdiction.

If appellant does not comply with this order, the Clerk will dismiss this appeal pursuant to Ninth Circuit Rule 42-1.

Briefing is suspended pending further order of the court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES COURT OF APPEALS

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District of Montana, Billings

ORDER

Before: CHRISTEN, MILLER, and H.A. THOMAS, Circuit Judges.

A review of the record and appellant's response to this court's October 16, 2023 order to show cause demonstrates that this court lacks jurisdiction over this appeal. The notice of appeal, served on September 29, 2023 and filed on October 2, 2023, was not filed or delivered to prison officials within 30 days after the district court's judgment entered on August 29, 2023. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(4) ("In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from."); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also Bowles v. Russell*, 551 U.S. 205 (2007) (court lacks authority to create equitable exceptions to jurisdictional requirement of

timely notice of appeal). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

APPENDIX

B

Campa v. Rosenquist, 2023 U.S. Dist. LEXIS 152787

United States District Court for the District of Montana, Billings Division

August 29, 2023, Decided; August 29, 2023, Filed

CV 22-128-BLG-SPW

Reporter

2023 U.S. Dist. LEXIS 152787 * | 2023 WL 5570161

GILBERT CAMPA, Plaintiff, vs. INGRID ROSENQUIST, MICKEY ECKHART, Defendants.

Core Terms

arrest, bail jumping, probable cause, amended complaint, allegations, probation, pleaded

Counsel: [*1] Gilbert Campa, Plaintiff, Pro se, Shelby, MT.

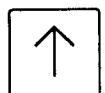
Judges: Susan P. Watters, United States District Judge.

Opinion by: Susan P. Watters

Opinion

ORDER

Plaintiff Gilbert Campa ("Campa"), proceeding without counsel, brought suit alleging constitutional violations associated with his arrest and incarceration in Yellowstone County. (Doc. 2.) Because the initial filing was difficult to understand and largely illegible, Campa was directed to file an amended complaint using the Court's standard form. (Doc. 3.)



On December 7, 2022, Campa filed his first amended complaint. (Doc. 5.) The Court then entered a screening order and advised Campa of the deficiencies within the document. (Doc. 7 at 4-120.) Campa was provided one final opportunity to amend his complaint. (*Id.* at 20-21.) On April 27, 2023, Campa filed his second amended complaint. (Doc. 10.) The second amended complaint as pleaded fails to state a claim for federal relief and will be dismissed.

STATEMENT OF THE CASE

Campa is a state prisoner currently incarcerated at Montana State Prison ("MSP"). The named defendants are Ingrid Rosenquist, a deputy Yellowstone County Attorney, who was involved in Campa's underlying state prosecution, and Mickey Eckhart, Campa's state probation [*2] officer. (Doc. 10 at 2.) Campa alleges the two defendants violated his Fourth Amendment right to be free of illegal seizure when they obtained "an illegal search warrant through deceit with no probable cause." (*Id.* at 3-4.) He asserts the two then violated his right to privacy when they had the US Marshalls Service ("USMS") execute this illegal search warrant via forcible entry into his home on December 7, 2020. (*Id.*)

As a result of his unlawful arrest, Campa also claims that his right to privacy, due process, and equal protection were each violated, as well as his right to be free of cruel and unusual punishment. (*Id.* at 3.) Campa asserts the USMS used excessive force when effectuating his arrest, which resulted in injury to his right bicep. (*Id.* at 5.) He states various family members witnessed his arrest and suffered attendant trauma and harm. (*Id.*)

Campa claims Defendants falsified information of bail jumping and falsified the subsequent warrant. These acts caused him to be incarcerated from December 7, 2020, to January 8, 2021. (Doc. 10-1 at 2.) Campa states he was first arrested for "bail jumping" on August 30, 2020, for failing to appear in court regarding allegations that he had violated his [*3] probation. (Doc. 10-1 at 3.) Campa explains that he posted bail on September 3, 2020. He then seems to allege that he was arrested again for this same bail jumping warrant on December 7, 2020. (*Id.* at 3-4.) He believes Defendants erred by failing to change the warrant to "inactive" after the August 30, 2020, execution of the first warrant. (*Id.* at 4.) Campa asserts, therefore, he was subjected to another \$20,000 bail for the same warrant to which he had already posted and been released. (*Id.*) Campa faults Defendants for not properly categorizing the original warrant and, in turn, setting off the chain of events that led to his arrest and injury. (*Id.* at 5-6.) Campa claims Defendant Rosenquist maliciously prosecuted him in the past and seems to suggest that the more recent incident is a repeat of what happened previously. (*Id.* at 6-8.)

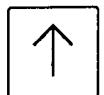
Campa further casts suspicion on the part of Rosenquist, as she apparently dismissed his bail jumping charge on the same day that he was sentenced to prison for probation violations. (*Id.* at 8.)

28 U.S.C. §§ 1915, 1915A SCREENING

The complaint is reviewed under 28 U.S.C. §§ 1915 and 1915A. Dismissal is required if it is frivolous, malicious, fails to state a claim upon which relief may be granted, [*4] or seeks monetary relief from a defendant who is immune from such relief.

Rule 8 Fed. R. Civ. P. requires a complaint "that states a claim for relief must contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief," Fed. R. Civ. P. 8(a)(2), and 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quotations omitted). The allegations must cross "the line from conceivable to plausible." *Id.* at 680.

Pro se filings are "to be liberally construed." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007); cf. Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice"). A "pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Id.*



ANALYSIS

As a preliminary matter, Campa is advised this Court has reviewed the docket associated with *State v. Campa*, Cause No. DC20-1171, the bail jumping case which Campa has referenced throughout these proceedings. See *Trigueros v. Adams*, 658 F. 3d 983, 987 (9th Cir. 2011)(proceedings, including orders and filings in other courts, including state courts, are the proper subject of judicial notice when directly related to the case at issue). **1** Despite giving Campa multiple opportunities to amend and explain his claims, the Court was still having difficulty **[*5]** following the factual basis for the claims as set forth by Campa in his pleadings.

Campa acknowledges in his second amended complaint that he missed a court date on August 30, 2020, for a probation revocation proceeding. He apparently was taken into custody and posted bail relative to that failure to appear. On August 31, 2020, the State of Montana sought leave to file an information charging Campa with felony bail jumping in *State v. Campa*, Cause No. DC20-1171. **2** It appears that Campa subsequently failed to appear at his arraignment on the bail jumping charge and the presiding judge, Hon. Donald L. Harris, issued a bench warrant in the amount of \$10,000 on September 8, 2020. **3** Campa was arrested on that bench warrant in December of 2020. He was arraigned on the new charge and his bond was set at \$20,000. **4** On January 8, 2021, Campa posted a surety bond through Mr. Bail, Inc. **5**

Thus, despite Campa's claims to the contrary, his arrest on August 30, 2020, and his subsequent arrest in December of 2020 did not occur as a result of the same warrant. The bail jumping charge was not even filed until *after* his August arrest and, as Campa acknowledges, the initial arrest was **[*6]** a result of his failure to appear at a revocation proceeding, not a new criminal charge and/or warrant. Further, to the extent that Campa believes either Defendant supplied false information to the district court in order to obtain a "search warrant" he is again mistaken. Judge Harris issued a bench warrant based upon Campa's failure to appear in court on September 4, 2020. That was the warrant upon which he was arrested by the USMS in December 2020.

Fourth Amendment

Campa was previously advised that his due process claim falls squarely within the Fourth Amendment. (Doc. 7 at 7-8.) **6** The Fourth Amendment prohibits arrests without probable cause or other justification. *Dubner v. City & Cnty. of S.F.*, 266 F. 3d 959, 964 (9th Cir. 2001). All arrests, either with or without a warrant, must be supported by probable cause. See *United States v. Del Vizo*, 918 F. 2d 821, 825 (9th Cir. 1990). Generally, an arrest pursuant to a warrant does not violate the Fourth Amendment. See *KRL v. Estate of Moore*, 512 F. 3d 1184, 1189 (9th Cir. 2008). If judicial deception is involved, however, that is if a warrant application contains deliberate falsehoods or a reckless disregard for the truth, including omissions, see *Chism v. Washington*, 661 F. 3d 380, 386-89 (9th Cir. 2011), or if the warrant application is so lacking in indicia of probable cause that it renders official belief in probable cause unreasonable, see *KRL*, 512 F. 3d at 1189-90, then the existence of the warrant will not immunize the officer for an arrest without probable **[*7]** cause. See *Smith v. Almada*, 640 F. 3d 931, 937 (9th Cir. 2011).

Campa's claims in the present matter do not undermine the warrant's validity. As set forth above, it was not a "search warrant" sought by the Defendants, but rather was a bench warrant the district court issued following Campa's failure to appear in his new criminal case, DC 20-1171. Thus, it appears the warrant was supported by probable cause. Moreover, Campa has not shown that there was any judicial deception involved in the warrant itself. Finally, to the extent that Campa alleges the bail jumping itself was invalid because Rosenquist ultimately dismissed the charge, the Court observes the dismissal was without prejudice, occurred nearly two years after the initial charge, and was done in conjunction with the resolution of other criminal matters, specifically Campa's probation

revocation proceedings. Thus, there is no basis for this Court to reasonably infer that probable cause was lacking or that the 2020 arrest warrant was invalid. Campa fails to state a claim.

While Campa continues to allege an Eighth Amendment violation occurred during his arrest, it appears he is alleging excessive use of force. Section 1983 claims arising from allegedly excessive force during the "arrest, investigatory stop, [*8] or other 'seizure' of a free citizen" are governed by the Fourth Amendment. *Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). Despite being given several opportunities to do so, Campa fails to identify or name any of the arresting officers as defendants. Further, there is no indication that either Rosenquist or Eckhart were involved in the arrest and alleged use of force against Campa. Accordingly, his complaint as plead fails to state a viable excessive use of force claim.

To the extent that Campa's complaint can be read to assert a claim for false imprisonment, absent a cognizable wrongful arrest claim, an independent claim under § 1983 for false imprisonment ordinarily does not exist. See *Baker v. McCollan*, 443 U.S. 137, 142-45, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979). When a detention occurs as the result of a false arrest, a false imprisonment claim may arise based on a deprivation of liberty. See *Baker*, 443 U.S. at 142. Campa has not shown that he was falsely arrested or that the persons detaining him were involved in or aware of the wrongful nature of the arrest. *Id.* at 1526-27. Thus, Campa has not stated a valid claim for false arrest or false imprisonment.

Fourteenth Amendment

The Equal Protection Clause requires that persons who are similarly situated be treated alike. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). An equal protection claim may be established by showing that the defendant intentionally discriminated against the plaintiff [*9] based on the plaintiff's membership in a protected class, *Serrano v. Francis*, 345 F. 3d 1071, 1082 (9th Cir. 2003), or that similarly situated individuals were intentionally treated differently without a rational basis for difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000)(per curiam). "When an equal protection claim is premised on unique treatment rather than on a classification, the Supreme Court has described it as a 'class of one' claim." *North Pacifica LLC v. City of Pacifica*, 526 F. 3d 478, 486 (9th Cir. 2008)(quoting *Olech*, 528 U.S. at 564).

Again, despite being advised of the relevant standards, Campa has not alleged that he is a member of a protected class or that there was no rational basis for treating him differently than other similarly situated individuals. He has not set forth sufficient facts to support an inference that he was discriminated against because he was a member of the class. Accordingly, the Court finds his bare conclusions are insufficient to state a viable equal protection claim against defendants. This claim, too, will be dismissed.

Campa's allegations in the second amended complaint are insufficient to state a claim and will be dismissed. "Leave to amend should be granted if it appears at all possible that the plaintiff can correct the defect." *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (internal quotations omitted.) Campa has already been provided two opportunities [*10] to amend his complaint, the Court concludes amendment would be futile.

IT IS HEREBY ORDERED:

1. Plaintiff's case is DISMISSED for failure to state a federal claim. Amendment would be futile.
2. The Clerk of Court is directed to file a copy of the docket sheet from *Stale v. Campa*, Cause No. DC-20-1171, as an exhibit to this Order.
3. The Clerk of Court is directed to enter judgment, pursuant to F. R. Civ. P. Rule 58.
4. The Court certifies that any appeal of this decision would not be taken in good faith.
5. Filing of this action counts as one strike against Campa under 28 U.S.C. § 1915(e)(2)(B)(ii).

DATED this 29th day of August, 2023.



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ORDER

Before: CHRISTEN, MILLER, and H.A. THOMAS, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 7) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

**Additional material
from this filing is
available in the
Clerk's Office.**