

FILED: November 28, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7026
(1:17-cv-00763-LO-MSN)

JERMAINE N. TURNER

Plaintiff - Appellant

v.

DR. BOWLES, Dental Hygienist

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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

No. 17-7026

JERMAINE N. TURNER,

Plaintiff - Appellant,

v.

DR. BOWLES, Dental Hygienist,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:17-cv-00763-LO-MSN)

Submitted: November 21, 2017

Decided: November 28, 2017

Before WYNN and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jermaine N. Turner, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Virginia prisoner, Jermaine N. Turner, appeals the district court's order dismissing, after a 28 U.S.C. § 1915A (2012) review, Turner's 42 U.S.C. § 1983 (2012) action alleging Defendant Dr. Bowles, a dental hygienist at Lawrenceville Correctional Center, violated his constitutional rights. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Turner v. Bowles*, No. 1:17-cv-00763-LO-MSN (E.D. Va. filed July 19, 2017 & entered July 20, 2017). 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 VIRGINIA

Alexandria Division

Jermaine N. Turner,
Plaintiff,

v.

Dr. Bowles,
Defendant.

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1:17cv763 (LO/MSN)

ORDER

Jermaine N. Turner, a Virginia inmate proceeding pro se, has filed a civil rights action, pursuant to 42 U.S.C. § 1983, alleging that Dr. Bowles violated his constitutional rights. Plaintiff has submitted an application to proceed in forma pauperis. After reviewing plaintiff's complaint, the claims against the defendant must be dismissed pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim.¹

I.

Plaintiff alleges that on March 1, 2017, Dr. Bowles, a dental hygienist at Lawrenceville Correctional Center, violated plaintiff's first, fifth, eighth, and fourteenth amendment rights.

¹ Section 1915A provides:

(a) **Screening.**—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for dismissal.**—On review, 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 can be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

Compl. According to plaintiff, Dr. Bowles damaged a gold crown on one of plaintiff's left teeth during a teeth cleaning procedure. Id. More specifically, plaintiff states that Dr. Bowles scratched the crown and destroyed its finish and shine. Id. Plaintiff alleges that Dr. Bowles attempted to eliminate the scratches by buffing the crown, but Dr. Bowles was unsuccessful. Id. Plaintiff states that he filed grievances against Dr. Bowles, but the response denied liability on the ground that no guarantees were made to plaintiff concerning the dental work and plaintiff was advised prior to the cleaning that if he wished to proceed he would do so at his own risk. Id. Plaintiff claims that Dr. Bowles is refusing to fix the problem, but a grievance response attached to the complaint states that "the provider attempted to address [plaintiff's] concern." Dkt. No. 1-1.² Plaintiff names Dr. Bowles as the sole defendant and seeks \$840.00 in damages. Id.

II.

Pursuant to § 1915A, a court must dismiss a prisoner complaint that "is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(b)(1). To state a cause of action under § 1983, a plaintiff must allege facts indicating that he was deprived of rights guaranteed by the Constitution or laws of the United States, and that this alleged deprivation resulted from conduct by a person acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). Plaintiff has failed to state a substantive claim upon which relief can be granted. Under different circumstances, he would be afforded an opportunity to particularize and amend his complaint due to his pro se status. Here, such a concession is not warranted because § 1983 does not support an action against Dr. Bowles.

² The court may also consider exhibits attached to the complaint. See United States ex rel. Constructors, Inc. v. Gulf Ins. Co., 313 F. Supp. 2d 593, 596 (E.D. Va. 2004). Moreover, where a conflict exists between "the bare allegations of the complaint and any attached exhibit, the exhibit prevails." Id.

Plaintiff cannot prevail on his claims because he does not allege a violation of his rights under the United States Constitution or any other federal law. Instead, plaintiff asserts that a gold crown on his left tooth was scratched. At most, plaintiff has stated a claim for negligence, which is not actionable under § 1983. Daniels v. Williams, 474 U.S. 327, 331–33 (1986) (opining that negligent conduct by a state official, even if it causes injury, does not rise to the level of a constitutional violation).

Accordingly, it is hereby

ORDERED that this action be and is DISMISSED, WITH PREJUDICE, for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1); and it is further

ORDERED, that plaintiff's motion to proceed in forma pauperis is DENIED as MOOT; and it is further

ORDERED that plaintiff is advised that, pursuant to 28 U.S.C. § 1915(g),³ this dismissal may affect his ability to proceed in forma pauperis in future civil actions; and it is further

ORDERED that the Clerk record this dismissal for purposes of the Prison Litigation Reform Act.

To appeal, plaintiff must file a written notice of appeal with the Clerk's Office within thirty (30) days of the entry of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order plaintiff

³ 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

wants to appeal. Failure to timely file a notice of appeal waives the right to appeal this decision. Plaintiff need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to enter final judgment in favor of defendant Dr. Bowles pursuant to Fed. R. Civ. P. 58, to send of copy of this Order to plaintiff, and to close this civil action.

Entered this 19th day of July 2017.

Alexandria, Virginia

/s/ [Signature]
Liam O'Grady
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

Jermaine N. Turner

Plaintiff,

V.

Dr. Bowles

Defendant.

Civil Action No. 1:17cv763

JUDGMENT

Pursuant to the order of this Court entered on July 19, 2017 and in accordance with Federal Rules of Civil Procedure 58, JUDGMENT is hereby entered in favor of the DEFENDANT and against the PLAINTIFF.

FERNANDO GALINDO, CLERK OF COURT

By: _____ /s/
Dana Van Metre
Deputy Clerk

Dated: 07/20/2017
Alexandria, Virginia