

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 30, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES BENJAMIN BARSTAD,
Plaintiff,

v.

WASHINGTON DEPARTMENT
OF CORRECTIONS, C/O
ALVAREZ, C/O ANA GARIBAY-
ORTIZ, C/O MARLENE
GONZALEZ, ROY GONZALEZ,
LT. DANIEL HOLLIBAUGH, C/O
BARBARA JACKSON, TRACY
SCHNEIDER,
C/O VICTORIA TAPIA and SGT.
JOHN TURNER,
Defendants.

No. 4:22-CV-05090-SAB

**ORDER DISMISSING FIRST
AMENDED COMPLAINT**

1915(g)

By Order filed October 21, 2022, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 14. Plaintiff, prisoner at the Coyote Ridge

ORDER DISMISSING FIRST AMENDED COMPLAINT -- 1

1 Corrections Center, is proceeding *pro se* and *in forma pauperis*; Defendants have
2 not been served. Plaintiff filed a First Amended Complaint on November 10, 2022.
3 ECF No. 15.

4 Generally, an amended complaint supersedes the original complaint and
5 renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th
6 Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint
7 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
8 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,
9 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (holding that any
10 claims voluntarily dismissed are considered to be waived if not re-pled).

11 Once again, Plaintiff names a Defendant, Washington Department of
12 Corrections, who is not susceptible to suit under Section 1983. *See Will v. Mich.*
13 *Dept. of State Police*, 491 U.S. 58, 71 (1989). “*Will* establishes that the State and
14 the arms of the State, which have traditionally enjoyed Eleventh Amendment
15 immunity, are not subject to suit under section 1983 in either federal or state
16 court.” *Howlett v. Rose*, 496 U.S. 356, 365 (1990). Therefore, Plaintiff’s Section
17 1983 claims for monetary damages against the Washington Department of
18 Corrections are dismissed for failure to state a claim upon which relief may be
19 granted.

20 Plaintiff asserts that Defendant Sgt. John Turner issued a Mail Rejection that
21 Defendant Lt. Daniel Hollibaugh upheld on December 12, 2019. ECF No. 15 at 7.
22 He indicates a second Mail Rejection was issued and upheld by the same persons
23 on January 9, 2020, concerning copies of the same documents. *Id.* at 9. Plaintiff
24 avers that documents he had mailed out to be copied and returned to him were
25 censored and he was “forced to mail out the document, interfering with Private
26 Legal Process and Access to the Courts/Legal System.” *Id.* at 7. Plaintiff further
27 asserts that the law library and contract attorneys do not “assist in Private Legal
28 (Administrative) Process.”

1 In the prior Order, the Court advised Plaintiff that he would need to identify
2 an actual injury to his access to the court concerning a habeas challenge or a
3 challenge to the conditions of his confinement. *See Lewis v. Casey*, 518 U.S. 343,
4 354 (1996); *Simmons v. Sacramento Cty. Super. Ct.*, 318 F.3d 1156, 1159–60 (9th
5 Cir. 2003) (explaining that “a prisoner has no constitutional right of access to the
6 courts to litigate an unrelated civil claim.”). ECF No. 14 at 6–7. Plaintiff has not
7 done so. He has therefore failed to state an access to court claim upon which this
8 Court may grant relief.

9 Under “Count III,” Plaintiff avers that Defendant Sgt. John Turner censored
10 and converted outgoing mail in January 2019, by allegedly forcing Plaintiff “to
11 abide by” a U.S. Post Office requirement of “Private Identification Without
12 Disclaimer” that Plaintiff claims does not apply to him. ECF No. 15 at 10. Plaintiff
13 complains that Defendant Turner unnecessarily stamped “copy” all over Plaintiff’s
14 document, a photocopy of an ID card. *Id.* He claims that Defendants Lt. Daniel
15 Hollibaugh and Roy Gonzalez “upheld the Rejection.” *Id.* at 10–11. Plaintiff states,
16 “Eventually they were returned to my ‘Record File,’ meaning I cannot access
17 them. If I attempt to re-send them, they will be censored again.” *Id.* at 11. Plaintiff
18 does not identify the actual injury to litigation challenging the fact or conditions of
19 his confinement. *Lewis*, 518 U.S. at 354. His assertions of “Complete stifling of
20 Private Administrative Process. Complete abridgment of Private Right of
21 Contract,” ECF No. 15 at 11–14, are insufficient to state an access to court claim
22 upon which this Court can grant relief.

23 The remaining allegations do not present facts from which the Court could
24 infer that identified Defendants confiscated his incoming mail in a manner that was
25 not reasonably related to the prison's legitimate penological interest in prison
26 safety, or that they confiscated his outgoing mail in a manner that did not further a
27 substantial governmental interest in prison safety. *See Thornburgh v. Abbott*, 490
28 U.S. 401, 413 (1989) (setting forth factors for evaluating a First Amendment claim

1 relating to the regulation of incoming mail); *Procunier v. Martinez*, 416 U.S. 396,
2 413–14 (1974) (setting forth factors for evaluating a First Amendment claim
3 relating to the regulation of outgoing mail), *overruled on other grounds by*
4 *Thornburgh*, 490 U.S. 401; *see also Beard v. Banks*, 548 U.S. 521, 528–30 (2006)
5 (courts should accord “deference to the views of prison authorities”). Plaintiff
6 alleged no facts from which the Court could infer that he was constitutionally
7 injured by any denial of access to mail. *See Morgan v. Montanye*, 516 F.2d 1367,
8 1371 (2nd Cir. 1975).

9 For the reasons set forth above and in the Court’s prior order, ECF No. 14,
10 **IT IS ORDERED** the First Amended Complaint, ECF No. 15, is **DISMISSED**
11 with prejudice for failure to state a claim upon which relief may be granted. 28
12 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

13 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
14 brings three or more civil actions or appeals which are dismissed as frivolous or for
15 failure to state a claim will be precluded from bringing any other civil action or
16 appeal in forma pauperis “unless the prisoner is under imminent danger of serious
17 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory
18 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may
19 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may
20 adversely affect his ability to file future claims.

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1 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
2 enter judgment, provide copies to Plaintiff at his last known address, and close the
3 file. The Clerk of Court is directed to forward a copy of this Order to the Office of
4 the Attorney General of Washington, Corrections Division. The Court certifies any
5 appeal of this dismissal would not be taken in good faith.

6 **DATED** this 30th day of December 2022.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

12 Stanley A. Bastian
13 Chief United States District Judge
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