

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

**Jun 29, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ASHTON THOMAS,

Plaintiff,

v.

EDWARD TOWBRIDGE, ALFREDO  
CRUZ, JOHN TUNNER, SHAWNA  
NISSEN, JASON TACKETT,  
MICHELLE DUNCAN and  
CARIANNE SHUSTER,

Defendants.

No. 4:22-cv-05041-SMJ

**ORDER DISMISSING  
COMPLAINT**

**1915(g)**

By Order filed April 25, 2022, the Court advised Plaintiff Ashton Thomas, a former prisoner now residing in the United Kingdom, of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 7. Plaintiff is proceeding *pro se* and *in forma pauperis*. ECF No. 6. Defendants have not been served. By separate Order the Court granted Plaintiff electronic case filing authorization. ECF No. 5.

Specifically, Plaintiff's assertion that he was subjected to profanity and racial slurs while housed at the Coyote Ridge Corrections Center in 2019, ECF No. 1 at 8, was insufficient to state a claim upon which relief may be granted. *See Freeman*

1 *v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997); *Rutledge v. Arizona Bd. of Regents*,  
2 660 F.2d 1345, 1353 (9th Cir. 1981), *aff'd sub nom. Kush v. Rutledge*, 460 U.S. 719  
3 (1983); *see, e.g., Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), *amended* 135  
4 F.3d 1318 (9th Cir. 1998) (disrespectful and assaultive comments by prison guard  
5 not enough to implicate Eighth Amendment); *Oltarzewski v. Ruggiero*, 830 F.2d  
6 136, 139 (9th Cir. 1987) (directing vulgar language at prisoner does not state  
7 constitutional claim); *Burton v. Livingston*, 791 F.2d 97, 99 (8th Cir. 1986) (“mere  
8 words, without more, do not invade a federally protected right”); *Ellingburg v.*  
9 *Lucas*, 518 F.2d 1196, 1197 (8th Cir. 1975) (prisoner does not have cause of action  
10 under § 1983 for being called obscene name by prison employee). This is so even  
11 if the verbal harassment is racially motivated. *See Hoptowit v. Ray*, 682 F.2d 1237,  
12 1252 (9th Cir. 1982) *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472  
13 (1995) (federal court cannot order guards to refrain from using racial slurs to harass  
14 prisoners); *Burton*, 791 F.2d at 101 n. 1 (use of racial slurs in prison does not offend  
15 Constitution).

16 In addition, Plaintiff’s allegations regarding the processing of grievances and  
17 investigations failed to state a constitutional violation. *See Ramirez v. Galaza*, 334  
18 F.3d 850, 860 (9th Cir. 2003). Plaintiff did not amend his complaint to state a  
19 cognizable claim and has filed nothing further in this action.

1 For the reasons set forth above and in the Order to Amend or Voluntarily  
2 Dismiss, ECF No. 7, **IT IS ORDERED** that the Complaint, **ECF No. 1**, is  
3 **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief  
4 may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

5 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
6 brings three or more civil actions or appeals that are dismissed as frivolous,  
7 malicious, or for failure to state a claim will be precluded from bringing any other  
8 civil action or appeal *in forma pauperis* “unless the prisoner is under imminent  
9 danger of serious physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read**  
10 **the statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s**  
11 **complaint may count as one of the three dismissals allowed by 28 U.S.C. §**  
12 **1915(g) and may adversely affect his ability to file future claims.**

13 The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this  
14 Order would not be taken in good faith and would lack any arguable basis in law or  
15 fact.

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**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order, enter judgment, provide copies to *pro se* Plaintiff, and **CLOSE** the file. The Clerk's Office is further directed to provide a copy of this Order to the Washington State Office of the Attorney General, Corrections Division.

**DATED** this 29<sup>th</sup> day of June 2022.

  
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SALVADOR MENDOZA, JR.  
United States District Judge