

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

UNITED STATES DISTRICT COURT **Nov 01, 2018**
EASTERN DISTRICT OF WASHINGTON SEAN F. MCAVOY, CLERK

JESS RICHARD SMITH,

Plaintiff,

v.

KEITH GOODENOUGH and M.
KNIGHTON,

Defendants.

No. 4:18-CV-05098-SMJ

**ORDER DISMISSING FIRST
AMENDED COMPLAINT**

28 U.S.C. § 1915(g)

Before the Court is Plaintiff’s First Amended Complaint, ECF No. 11. Plaintiff, a prisoner at the Coyote Ridge Corrections Center, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Liberally construing the First Amended Complaint in the light most favorable to Plaintiff, the Court finds it fails to cure the deficiencies of the initial complaint.

Plaintiff asserts that he filed a complaint against Defendant Keith Goodenough in April 2017, which he identifies as case number 4:18-CV-05031-SMJ. Court records indicate that case number 4:18-CV-05031-SMJ was not initiated in this Court until February 21, 2018.

According to records, Plaintiff submitted a complaint against Defendant

1 Goodenough and two other defendants on April 28, 2017, which was assigned case
2 number 4:17-CV-05060-SMJ. On July 24, 2017, Plaintiff was instructed to amend that
3 complaint or voluntarily dismiss. *Id.*, ECF No. 15. Following an interlocutory appeal,
4 the Court dismissed that complaint on January 12, 2018, based on Plaintiff's refusal to
5 obey an order of the Court, *id.*, ECF No. 34, but without prejudice to Plaintiff re-filing
6 his complaint against Defendant Goodenough. He apparently did so, resulting in case
7 number 4:18-CV-05031-SMJ.

8 Plaintiff contends that on July 13, 2017, he sent a kite to Defendant Goodenough
9 seeking a monetary settlement. In response, Defendant Goodenough infringed Plaintiff
10 on July 17, 2017, for extortion and interfering with staff. On July 24, 2017, Defendant
11 M. Knighton conducted the serious infraction hearing.

12 Plaintiff asserts he argued that he could not be punished for "exercising his right
13 to seek a remedy." He avers Defendant Knighton confirmed the court proceedings but
14 found Plaintiff guilty of extortion because it was "inappropriate" to use the kite system
15 to settle a legal matter. Plaintiff states that he was found "not guilty" of interfering with
16 staff, but was sanctioned with fifteen days' loss of dayroom and twenty days' loss of
17 yard for extortion, and the extortion infraction remains on his prison record. Plaintiff
18 seeks monetary damages and expungement of the infraction.

19 RETALIATION

20 Plaintiff contends that Defendant Goodenough retaliated against him for

1 hardship on the inmate in relation to his ordinary incidents of prison life.” *Sandin v.*
2 *Conner*, 515 U.S. 472, 483–84 (1995).

3 As stated in *Meachum v. Fano*, 427 U.S. 215, 224 (1976), due process does not
4 protect every change in the conditions of confinement, not even ones having a
5 “substantial adverse impact” on prisoners. Here, the sanctions imposed upon Plaintiff,
6 fifteen days’ loss of dayroom and twenty days’ loss of gym-yard, are not “atypical and
7 significant” enough to invoke procedural due process protections. *See Sandin*, 515 U.S.
8 at 483–84. And Plaintiff again presents no facts from which the Court could infer that
9 Defendant Knighton acted in the absence of a legitimate correctional goal. Accordingly,
10 Plaintiff fails to state a First Amendment due process claim against Defendant
11 Knighton.

12 Although given the opportunity to do so, Plaintiff did not amend his complaint
13 to state a claim upon which the Court may grant him relief.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 **1.** The First Amended Complaint, **ECF No. 11**, is **DISMISSED WITH**
16 **PREJUDICE** under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

17 **2.** Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
18 who brings three or more civil actions or appeals that are dismissed as
19 frivolous, malicious, or for failure to state a claim will be precluded
20 from bringing any other civil action or appeal *in forma pauperis* “unless

1 the prisoner is under imminent danger of serious physical injury.”


2 **Plaintiff is advised to read the statutory provisions under 28 U.S.C.**
3 **§ 1915. This dismissal of Plaintiff’s complaint may count as one of**
4 **the three dismissals allowed by 28 U.S.C. § 1915(g) and may**
5 **adversely affect his ability to file future claims.**

6 3. The Clerk’s Office is directed to enter **JUDGMENT FOR**
7 **DEFENDANTS** and **CLOSE** this file.

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

11 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
12 provide copies to Plaintiff and the Washington State Attorney General’s Office,
13 Corrections Division.

14 **DATED** this 1st day of November 2018.

15 
16 SALVADOR MENDEZ, JR.
United States District Judge