

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

Mar 22, 2018

SEAN F. MCAVOY, CLERK

RECEIVED

MAR 27 2018

ATTORNEY GENERAL'S OFFICE  
Corrections Division

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

VALIENTE LOPEZ,

Plaintiff,

v.

LAWRENCE MARTIN, M.D.,

Defendant.

NO: 4:17-CV-5181-RMP

ORDER DISMISSING COMPLAINT

1915(g)

By Order filed January 11, 2018, ECF No. 9, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. Plaintiff indicated in his complaint that he was incarcerated at the Coyote Ridge Corrections Center ("CRCC"), ECF No. 8, but documents were provided to Plaintiff at the Airway Heights Corrections Center, ECF No. 3, and it appears that is where he has been housed since he lodged his complaint with this Court.

Plaintiff brought this action against the Chief Medical Officer of the CRCC, Dr. Lawrence Martin, seeking injunctive and declaratory relief, as well as \$3

1 million in monetary damages. He claimed Dr. Martin was responsible for the  
2 provision of constitutionally adequate care, but presented no facts showing that Dr.  
3 Martin knew of any violations of constitutionally adequate care or failed to prevent  
4 any violations, *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989), or that Dr.  
5 Martin established a custom or policy that led to the violation of constitutionally  
6 adequate care. *See Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d  
7 675, 680 (9th Cir. 1984); *see also Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir.  
8 2011) (a supervisor can only be held liable for his or her own culpable action or  
9 inaction).

10 Plaintiff claimed that Dr. Martin failed to properly review Plaintiff's medical  
11 file, replaced an anti-seizure medication with an anti-psychotic medication, and  
12 failed to assign Plaintiff to a lower bunk. As a result, Plaintiff asserted that he  
13 suffered a "fatal" seizure which caused severe head trauma and inter-cranial  
14 bleeding.

15 The Court advised Plaintiff that the negligent prescription of medications,  
16 without factual allegations showing that Dr. Martin acted with deliberate  
17 indifference to Plaintiff's serious medical needs, was insufficient to establish a  
18 constitutional violation. *See Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)  
19 ("Mere medical malpractice does not constitute cruel and unusual punishment.")  
20 (citation omitted); *see also Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir.  
21 1990) (stating that even gross negligence is insufficient to establish a constitutional

1 violation); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992) (mere  
2 negligence in diagnosing or treating a medical condition, without more, does not  
3 violate a prisoner's Eighth Amendment rights), *overruled on other grounds by*  
4 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997).

5 Although granted the opportunity to cure these deficiencies, Plaintiff did not  
6 amend his complaint and he has filed nothing further in this action. Therefore, for  
7 the reasons set forth above and in the Court's Order to Amend or Voluntarily  
8 Dismiss, ECF No. 9, **IT IS HEREBY ORDERED** that the Complaint, ECF No. 8,  
9 is **DIMISSED with prejudice** for failure to state a claim upon which relief may be  
10 granted under 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1).

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

19 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
20 enter Judgment, provide copies to Plaintiff at his last known address, and **close this**  
21 **case.** The Clerk of Court is further directed to provide a copy of this Order to the

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Office of the Attorney General of Washington, Corrections Division. The Court certifies any appeal of this dismissal would not be taken in good faith.

**DATED** March 22, 2018.

*s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
United States District Judge

UNITED STATES DISTRICT COURT

for the Eastern District of Washington

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

Mar 22, 2018

SEAN F. McAVOY, CLERK

Valiente Lopez,

Plaintiff

v.

Lawrence Martin, M.D.,

Defendant

Civil Action No. 4:17-cv-05181-RMP

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

[ ] the plaintiff (name) recover from the defendant (name) the amount of dollars (\$ ), which includes prejudgment interest at the rate of %, plus post judgment interest at the rate of % per annum, along with costs.

[ ] the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) recover costs from the plaintiff (name)

[x] other: Complaint, ECF No. 8, is DIMISSED with prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1).

This action was (check one):

[ ] tried by a jury with Judge presiding, and the jury has rendered a verdict.

[ ] tried by Judge without a jury and the above decision was reached.

[x] decided by Judge Rosanna Malouf Peterson.

Date: 03/22/2018

CLERK OF COURT

SEAN F. McAVOY

s/ Allison Yates

(By) Deputy Clerk

Allison Yates

