

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

Sep 06, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RICHARD G. HUMPHRIES,  
Plaintiff,

v.

DONALD HOLBROOK, MICHEAH  
GONZALES, JERALD TRAVIS, JASON  
MCCOLLUM, SGT. GARY PIERCE, B.  
WHALEER, and SGT ATHONY  
SERVEN,  
Defendants.

4:18-cv-05014-SAB

**ORDER DISMISSING  
COMPLAINT**

**1915(g)**

By Order filed May 31, 2018, the Court advised Plaintiff, a former prisoner residing in Marysville, Washington, of the deficiencies of his complaint and directed him to amend or voluntarily dismiss. ECF No. 12. Plaintiff is proceeding *in forma pauperis*. ECF No. 5.

A set forth in the Court's Order, Plaintiff presented no facts from which the Court could infer that Defendant Superintendent Holbrook was aware of constitutional violations or that any alleged violations were caused by a custom or policy he established. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989; *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 680 (9th Cir. 1984); *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (a supervisor can only be held liable for his or her own culpable action or inaction).

1 Plaintiff alleged that he was sanctioned with ten days of segregation  
2 following a March 2017 disciplinary hearing at which an allegedly forged  
3 signature on a witness statement was used to convict him and argued that his  
4 earned release date was extended from March 30, 2017, until July 13, 2017,  
5 because his housing voucher was cancelled due to the infraction.

6 To the extent Plaintiff was asserting that the disciplinary action affected the  
7 duration of his confinement, the Court found that he did not state that he had  
8 exhausted available state court remedies and it appeared that Plaintiff would be  
9 unable to pursue a federal habeas petition as he was no longer in custody. *Maleng*  
10 *v. Cook*, 490 U.S. 488, 490-91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a));  
11 *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)).

12 A state prisoner's claim for damages is not cognizable under § 1983 if a  
13 judgment for the prisoner would "necessarily imply" the invalidity of his  
14 conviction or sentence, unless the prisoner can demonstrate that the conviction or  
15 sentence has previously been invalidated. *See Heck v. Humphrey*, 512 U.S. 477,  
16 487 (1994). Having failed to show that the disciplinary action was invalidated, the  
17 Court found Plaintiff's due process claim was not cognizable under 42 U.S.C. §  
18 1983, *see Edwards v. Balisok*, 520 U.S. 641, 648-49 (1997), and was subject to  
19 dismissal. *See Butterfield v. Bail*, 120 F.3d 1023, 1025 (9th Cir. 1997).

20 In addition, the Court found Plaintiff failed to present facts from which it  
21 could infer that identified Defendants were deliberately indifferent to his type 2  
22 diabetes. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992); *Estelle v. Gamble*, 429 U.S.  
23 97, 106 (1976); *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). His bald assertion  
24 of an equal protection violation was also unsupported by factual allegations. *City of*  
25 *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985); *Shakur v. Schriro*,  
26 514 F.3d 878, 891 (9th Cir. 2008).

27 The Court cautioned Plaintiff that if he failed to amend or voluntarily  
28 dismiss, the complaint would be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)

1 and 1915A(b)(1). Plaintiff did not amend and has filed nothing further in this  
2 action.

3 Accordingly, **IT IS ORDERED:**

4 1. The Complaint, ECF No. 6, is **DISMISSED with prejudice** for  
5 failure to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)  
6 and 1915A(b)(1).

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

15 3. Plaintiff’s Request for Order Appointment of Counsel, ECF No. 7, is  
16 **DENIED.**

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

22 **DATED** this 6<sup>th</sup> day of September 2018.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

28  
Stanley A. Bastian  
United States District Judge