

Nov 13, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEROY K. BERRA,

Plaintiff,

v.

SGT WHITE,

Defendant.

NO: 2:20-CV-0066-TOR

ORDER DISMISSING COMPLAINT

1915(g)

By Order filed April 24, 2020, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 8. The Court noted that Plaintiff's allegations failed to state a claim upon which relief may be granted. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Specifically, the Court explained that Plaintiff has failed to allege facts showing the actions of Defendant White were taken in retaliation for Plaintiff's protected activities, did not reasonably advance a legitimate correctional goal and would chill a reasonable prisoner's First Amendment activities. *Rhodes v. Robinson*, 408 F.3d

1 559, 567–68 (9th Cir. 2005). Plaintiff also did not present facts showing any
2 disciplinary conditions he experienced were excessive in relation to legitimate
3 government interests. *See Bell v. Wolfish*, 441 U.S. 520 (1979). Plaintiff’s
4 allegations are insufficient to state a Fourteenth Amendment due process claim upon
5 which relief may be granted.

6 On June 1, 2020, Plaintiff sought an extension of time to comply with the
7 Court’s Order. ECF No. 9. The Court granted Plaintiff’s request and set November
8 4, 2020, as the deadline to file an amended complaint or voluntarily dismiss. ECF
9 No. 10.

10 Although cautioned that failure to amend or voluntarily dismiss would result
11 in the dismissal of this action for failure to state a claim upon which relief may be
12 granted and the issuance of a “strike” under 28 U.S.C. § 1915(g), Plaintiff did not
13 comply with the Court’s Order and has filed nothing further. Therefore, for the
14 reasons set forth above and in the Court’s previous Order, ECF No. 8, **IT IS**
15 **ORDERED** this action is **DISMISSED with prejudice** under 28 U.S.C. §§
16 1915(e)(2) and 1915A(b)(1).

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

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


5 Accordingly, IT IS HEREBY ORDERED:

- 6 1. The complaint, ECF No. 1, is **DISMISSED with prejudice** for failure to state
7 a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and
8 1915A(b)(1).
- 9 2. Plaintiff’s *in forma pauperis* status is revoked.
- 10 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this
11 Order would not be taken in good faith.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
13 enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE**
14 the file. The Clerk of Court is further directed to forward a copy of this Order to the
15 Office of the Attorney General of Washington, Corrections Division.

16 **DATED** November 13, 2020.




THOMAS O. RICE
United States District Judge