

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

**Apr 26, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAURICE T. BROWN,  
Plaintiff,

v.

WASHINGTON STATE  
DEPARTMENT OF  
CORRECTIONS,  
Defendant.

No. 1:23-CV-03005-SAB

**ORDER DISMISSING FIRST  
AMENDED COMPLAINT**

**1915(g)**

Before the Court is Plaintiff's First Amended Complaint pursuant to 42 U.S.C. § 1983. ECF No. 7. Plaintiff, a pretrial detainee at the Yakima County Jail, is proceeding *pro se* and *in forma pauperis*. ECF No. 5. He has diligently advised the Court of his current address. *See* ECF Nos 8 and 9. Defendants have not been served in this action.

Generally, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th

**ORDER DISMISSING FIRST AMENDED COMPLAINT \*1**

1 Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (holding that any claims  
2 voluntarily dismissed are considered to be waived if not re-pled). Furthermore,  
3 defendants not named in an amended complaint are no longer defendants in the  
4 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore,  
5 Defendants Brian Hultgren, the Franklin County Prosecutors Office, and Craig  
6 Stillwell have been terminated from this action.

7 After reviewing the First Amended Complaint in the light most favorable to  
8 Plaintiff, the Court finds that he has failed to cure the deficiencies of his initial  
9 complaint and the First Amended Complaint fails to state a claim upon which relief  
10 may be granted. The Court cautioned Plaintiff that if he failed to amend to state a  
11 claim upon which relief may be granted, the First Amended Complaint would be  
12 dismissed under 28 U.S.C. §§ 1915(e)(2) & 1915A(b), and such dismissal would  
13 count as a “strike” under 28 U.S.C. § 1915(g).

14 The only remaining Defendant to this action is the Washington State  
15 Department of Corrections (“DOC”). Plaintiff claims the DOC “did not catch” an  
16 “error” in 2021, resulting in a 67-month sentence rather than a 57-month sentence.  
17 ECF No. 7 at 5. Because of this error, Plaintiff is seeking punitive monetary  
18 damages.

19 The Court advised Plaintiff in the Order to Amend or Voluntarily Dismiss,  
20 ECF No. 6 at 4, that “neither a State nor its officials acting in their official capacity  
21 are ‘persons’ under § 1983.” *Will v. Michigan Dept. of State Police*, 491 U.S. 58,  
22 71 (1989). Likewise, “arms of the State” such as the DOC are not “persons”  
23 amenable to suit under 42 U.S.C. § 1983. *Id.* at 70. Although granted the  
24 opportunity to do so, Plaintiff has failed to amend his complaint to state a claim  
25 upon which relief may be granted.

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1 For the reasons set forth above and in the Order to Amend or Voluntarily  
2 Dismiss, ECF No. 6, **IT IS HEREBY ORDERED** that the First Amended  
3 Complaint, ECF No. 7, is **DISMISSED with prejudice** for failure to state a claim  
4 upon which relief may be granted. 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2).

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

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

18 **DATED** this 26th of April 2023.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

26 Stanley A. Bastian  
27 Chief United States District Judge  
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