

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

**Oct 21, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES D. GRIEPSMA,

Plaintiff,

v.

SUPERINTENDENT DONALD  
HOLBROOK, SERGEANT  
TORRESCANO, C/O ROBERT  
SMITH #7556, C/O RAILY, C/O  
DAHL, C/O HEY GROGAN, C/O  
ZARNT, C/O CORNAJO, C/O  
FARROW, C/O M. WALISER #7395,  
and PA-C JO ELLA PHILLIPS,

Defendants.

NO: 4:20-CV-5111-RMP

ORDER DISMISSING ACTION

**1915(g)**

By Order filed August 19, 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. 12. Plaintiff James D. Griepsma, a prisoner at the Washington State Penitentiary (“WSP”), is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. The Court cautioned Plaintiff that if he failed to amend his complaint or voluntarily dismiss this action, the Court

ORDER DISMISSING ACTION -- 1

1 would dismiss it for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and  
2 1915A(b)(1). ECF No. 12 at 24. The deadline to file has passed, and Plaintiff has  
3 filed nothing further in this action.

4 In his complaint, Plaintiff failed to present facts showing identified  
5 Defendants used Oleoresin Capsicum (“O.C.”) spray, also known as “pepper  
6 spray,” against him, without justification and knowing Plaintiff had a “medical  
7 authorization” against the use of O.C. spray, rather than in a good faith effort to  
8 restore discipline and order. *See Clement v. Gomez*, 298 F.3d 898, 903 (9th Cir.  
9 2002). He also failed to allege facts showing identified Defendants were  
10 deliberately indifferent to his serious medical needs in violation of the Eighth  
11 Amendment. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992); *Estelle v. Gamble*, 429  
12 U.S. 97, 106 (1976). He presented no facts to support his conclusory assertions of  
13 constitutional violations or speculations of future harm.

14 Although granted the opportunity to do so, Plaintiff did not allege facts  
15 indicating that the course of action by identified Defendants was medically  
16 unacceptable under the circumstances or was chosen in conscious disregard of an  
17 excessive risk to Plaintiff’s health. *See Hamby v. Hammond*, 821 F.3d 1085, 1092  
18 (9th Cir. 2016). Furthermore, Plaintiff’s conclusory assertions of retaliation were  
19 insufficient to state a First Amendment claim. *See Rhodes v. Robinson*, 408 F.3d  
20 559, 567–68 (9th Cir. 2005); *Watison v. Carter*, 668 F.3d 1108, 1114–15 (9th Cir.  
21 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009).

1 Accordingly, for the reasons set forth above and in the Order to Amend or  
2 Voluntarily Dismiss, ECF No. 12, **IT IS ORDERED** that this action is  
3 **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief  
4 may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

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

13 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
14 Order, enter Judgment, provide copies to Plaintiff, and **CLOSE** the file. The  
15 District Court Clerk is further directed to provide a copy of this Order to the Office  
16 of the Attorney General of Washington, Corrections Division. The Court certifies  
17 that any appeal of this dismissal would not be taken in good faith.

18 **DATED** October 21, 2020.

19 s/ Rosanna Malouf Peterson  
20 ROSANNA MALOUF PETERSON  
21 United States District Judge