

**Jul 06, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KYLE WILLIAM MORATTI,

Plaintiff,

v.

WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,  
AIRWAY HEIGHTS CORRECTIONS  
CENTER, RN N. ROBINSON, RN G.  
TROUTT, and DR. D. FETROE,

Defendants.

NO: 2:20-CV-0153-TOR

ORDER OF DISMISSAL

**1915(g)**

By Order filed May 30, 2019, the Court advised Plaintiff of the deficiencies of his civil rights complaint, filed while he was a prisoner at the Snohomish County Jail, and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 8. This deadline was administratively extended to July 6, 2020, after the Court received notice that Plaintiff had been transferred to the custody of the Department of Corrections and was housed at the Washington Corrections Center in Shelton,

1 Washington. ECF No. 9. Plaintiff is proceeding *pro se* and *in forma pauperis*;  
2 Defendants have not been served.

3 Specifically, the Court advised Plaintiff that the Washington State Department  
4 of Corrections and Airway Heights Corrections Center are not susceptible to suit  
5 under Section 1983, *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989); his  
6 claims arising in 2013 were time-barred absent equitable tolling, *see RK Ventures,*  
7 *Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002); and his allegations did  
8 not support an Eighth Amendment claim of deliberate indifference to his serious  
9 medical needs, *see Hudson v. McMillian*, 503 U.S. 1, 9 (1992); *Estelle v. Gamble*,  
10 429 U.S. 97, 106 (1976). ECF No. 8 at 4-9. The Court cautioned Plaintiff that if he  
11 failed to amend within 60 days as directed, the Court would dismiss the complaint  
12 for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), and that  
13 such dismissal may count as a “strike” under 28 U.S.C. § 1915(g). ECF No. 8 at 10-  
14 11.

15 Plaintiff has failed to timely amend his complaint. For the reasons set forth  
16 above and in the Court’s Order to Amend or Voluntarily Dismiss Complaint, ECF  
17 No. 8, the Complaint, ECF No. 5, is **DISMISSED** with prejudice for failure to state  
18 a § 1983 claim against identified Defendants upon which relief may be granted.

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1           **ACCORDINGLY, IT IS ORDERED:**

2           1. The claims asserted in Plaintiff's Complaint, ECF No. 5, are **DISMISSED**  
3           **with prejudice.**

4           2. This dismissal will count as a "strike" under 28 U.S.C. § 1915(g).

5           3. Plaintiff's *in forma pauperis* status is hereby **REVOKED.**


6           4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this  
7           Order would not be taken in good faith and would lack any arguable basis in  
8           law or fact.

9           5. The Clerk of Court is further directed to forward a copy of this Order to the  
10          Office of the Attorney General of Washington, Criminal Justice Division.

11          The Clerk of Court is directed to enter this Order and Judgment accordingly,  
12          forward copies to Plaintiff, and **CLOSE** the file.

13          **DATED** July 6, 2020.



15                                   
16                                 THOMAS O. RICE  
17                                 Chief United States District Judge  
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