

Feb 02, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GRAHAM SHERRILL,

Plaintiff,

v.

SGT. PATRICK STRAND, and
UNKNOWN NAMED OFFICIALS
(to be discovered by Discovery),

Defendants.

NO: 2:21-CV-00244-RMP

ORDER DISMISSING ACTION
WITH PREJUDICE

1915(g)

Before the Court are Plaintiff Graham Sherrill's Second Amended Complaint received on January 27, 2022, ECF No. 21, and a letter dated January 7, 2022, asserting "no good means or success still and continuing to access the legal library, And E-filing having to find alternative ways. Not sure if successfully going through." ECF No. 19 at 1 (as written in original). Both documents were mailed to the Court. Plaintiff has been reminded of his obligation to participate in the Prison E-filing Program. ECF No. 20. Plaintiff, a prisoner at the Airway

1 Heights Corrections Center (“AHCC”) is proceeding *pro se* and *in forma pauperis*.
2 Defendants have not been served.

3 Plaintiff asserts in his January 7, 2022, letter that he is “being denied and
4 hindered priority access, needing to do research & legal work having active cases.”
5 ECF No. 19 at 1. Plaintiff does not identify what he was unable to research
6 regarding this case that hindered his access to this Court. Indeed, Plaintiff timely
7 filed a Second Amended Complaint, albeit via the mail. Furthermore, it appears
8 from his submission that he was granted priority access to the law library on
9 December 14, 2021. ECF No. 19 at 3 (as written in original). There are no unmet
10 deadlines in this case and any construed request for an extension of time to file a
11 Second Amended Complaint must be denied as moot.

12 Liberally construing the Second Amended Complaint in the light most
13 favorable to Plaintiff, the Court finds that it does not cure the deficiencies of prior
14 complaints. The Court cautioned Plaintiff that if he chose to amend and the Court
15 found that the Second Amended Complaint failed to state a claim upon which
16 relief may be granted, that it would be dismissed pursuant to 28 U.S.C. §§
17 1915(e)(2) and 1915A(b)(1). ECF No. 18 at 7. For the reasons set forth below, the
18 Court finds that Plaintiff’s Second Amended Complaint fails to state a claim upon
19 which relief may be granted.

20 **PLAINTIFF’S ALLEGATIONS**

21 Plaintiff asserts that he is seeking injunctive and declaratory relief as well as

1 punitive damages. ECF No. 21 at 1. He claims that Defendant Sgt. Strand
2 erroneously claimed that Plaintiff submitted two grievances for the same claim in
3 September 2021, apparently involving law library access. *Id.* at 3. This allegation
4 post-dates the filing of the initial action on August 13, 2021.

5 Plaintiff contends that his second grievance “is a violation of 1st
6 Amendment denial of Access to the courts,” apparently because Defendant Strand
7 requested a “rewrite,” and labeled it a “repeat concern.” *Id.* Plaintiff states that he
8 received a “notification of abuse of quantity” on November 23, 2021, by which the
9 Court infers that he was notified that he had exceeded the number of grievances he
10 could maintain during a given period of time. *Id.* at 3 (as written in original).

11 Plaintiff indicates that when he wrote to the Grievance Program Manager, who is
12 not named as a Defendant to this action, she noted on an unspecified date that his
13 “concerns were valid.” *Id.* at 4.

14 Plaintiff states that he wrote another grievance on October 15, 2021,
15 regarding “callouts and requests” and “Defendant (1) Strand, and (2) unknown
16 Arbitrarily denied Grievances and Access to the courts, A first Amendment
17 violation. And which poses a cruel and unusual punishment violation of the Eighth
18 Amendment. Because, only through the courts may relief be Granted, when
19 Defendant[s] Act in Bad faith in violation of civil Rights.” *Id.* at 4 (as written in
20 original). Plaintiff does not support his contentions with facts.

21 / / /

1 Plaintiff asserts that Defendant Sgt. Strand “intentionally and cruelly
2 punish[ed] plaintiff for filing Grievances Against prison officials (Including Strand)
3 in violation of the “non Retaliation Standard” in Direct violation of the Eighth
4 Amendment.” *Id.* at 5. Although granted the opportunity to do so, Plaintiff again
5 fails to support his conclusory assertions with facts.

6 Plaintiff contends that Defendant No. 2 is a grievance official at the AHCC
7 who “remains in secret, unwilling to comply with production Requests to their
8 name.” ECF No. 21 at 6. Although Plaintiff claims this person violated his “first
9 Amendment Right of Access to courts in Deliberate Indifference to plaintiff’s civil
10 Right and statutorial [sic] rights; Federal and state statutes, Regulations &
11 policies,” Plaintiff presents no facts to support these conclusory assertions. *Id.*

12 Plaintiff states that after filing this and other actions in this Court, he
13 requested “priority” access to the law library. ECF No. 21 at 7. He states that he
14 was told that he would be “placed on callout,” but he was not on the list when it
15 was issued. *Id.* He asserts that “further Requests met with similar denials.” The
16 Court is unable to infer from these assertions against unidentified persons that
17 Plaintiff was denied access to the Courts.

18 Plaintiff states that he was given “Rules” infraction for “Abuse of process.
19 Despite that Each denial is A separate Action of a civil Rights denial, which would
20 be Allowable. This subsequent punishment, served as violation of (1) Due Process
21 Guarantee; (2) Right of Access to the Courts; (3) posed cruel & unusual

1 punishment for the Exercise of a constitutionally protected Right.” ECF No. 21 at
2 7 (as written in original).

3 **GRIEVANCES**

4 The manner in which a grievance is processed is not a constitutional
5 deprivation. Prisoners lack a constitutional right to a specific grievance procedure.
6 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855
7 F.2d 639, 640 (9th Cir. 1988). Accordingly, mere dissatisfaction with the remedy
8 process or its results cannot, without more, support a claim for relief for violation
9 of a constitutional right.

10 The failure of prison officials to entertain a prisoner’s administrative
11 grievance does not violate his or her constitutional rights because the right to
12 petition the government is the right of access to the courts, not the administrative
13 process. *See Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991); *see also Baltoski v.*
14 *Pretorius*, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003) (“The right to petition the
15 government for redress of grievances, however, does not guarantee a favorable
16 response, or indeed any response, from state officials.”). Here, Plaintiff is
17 challenging the fact that Defendant Sgt. Patrick Strand, the Grievance Coordinator
18 told him to “rewrite” grievances, labeled some greivances “repeat concerns” and
19 denied grievances. ECF No. 21 at 3–5. These assertions regarding the processing
20 of his grievances do not state a due process claim upon which relief may be
21 granted.

ACCESS TO THE COURTS

Under the First and Fourteenth Amendments to the United States Constitution, state prisoners have a right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 346 (1996). The right of access is limited to complaints in direct criminal appeals, habeas petitions, and civil rights actions. *Id.* at 354; *Simmons v. Sacramento Cty. Super. Ct.*, 318 F.3d 1156, 1159–60 (9th Cir. 2003) (explaining that “a prisoner has no constitutional right of access to the courts to litigate an unrelated civil claim.”).

To establish the denial of meaningful access to the courts, a plaintiff must show that he or she suffered an “actual injury” as a result of the defendants’ actions. *See Lewis v. Casey*, 518 U.S. 343, 351–52 (1996) (stating that an inmate bringing an access to the courts claim must establish that he or she has suffered an “actual injury”); *Vandelft v. Moses*, 31 F.3d 794, 798 (9th Cir. 1994) (holding that an inmate must establish he or she has suffered an “actual injury” where he or she alleges that he or she was denied reasonable access to the law library). Further, “*Bounds* [*v. Smith*, 430 U.S. 817, 823 (1977)] ‘guarantee[d] no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts.’” *Phillips v. Hurst*, 588 F.3d 652, 655 (9th Cir. 2009) (*quoting Lewis*, 518 U.S. at 356).

“Because *Bounds* did not create an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply

1 by establishing that his prison's law library or legal assistance program is subpar in
2 some theoretical sense." *Lewis*, 518 U.S. at 351. "[A]n inmate must show that
3 official acts or omissions 'hindered his efforts to pursue a [non-frivolous] legal
4 claim.'" *Phillips*, 588 F.3d at 655 (citing *Lewis*, 518 U.S. at 351).

5 Plaintiff has presented no facts from which the Court could infer that he has
6 suffered an actual injury to "contemplated or existing litigation, such as the inability
7 to meet a filing deadline or to present a claim." *Lewis*, 518 U.S. at 348. Plaintiff
8 does not explain why access to a law library would assist in attempting to cure the
9 factual deficiencies identified in his complaint(s), especially when the Court
10 provided him with the legal standards. Plaintiff has failed to state an access to court
11 claim upon which relief may be granted.

12 **EIGHTH AMENDMENT**

13 Apart from his conclusory assertions of "deliberate indifference," Plaintiff
14 has presented no facts from which the Court could infer that identified Defendants
15 acted with deliberate indifference to plaintiff's health or safety. *Farmer v. Brennan*,
16 511 U.S. 825, 835 (1994). Deliberate indifference exists when the prison official
17 "acted or failed to act despite his knowledge of a substantial risk of serious harm."
18 *Id.* at 842. Negligence is not actionable under section 1983. *Davidson v. Cannon*,
19 474 U.S. 344, 347–48 (1986). Although granted the opportunity to amend,
20 Plaintiff has failed to state an Eighth Amendment claim upon which relief may be
21 granted.

1 **POLICY AND STATE LAW VIOLATIONS**

2 Plaintiff broadly asserts that “Defendants violate state statutes, regulations and
3 policies.” ECF No. 21 at 8. He further asserts that his “claims of conspiracy are
4 Established under 18 USC § 241; 42 USC § 1985 & § 1986,” and cause him to
5 experience “severe depression, anxiety, weight loss, sleeplessness, thoughts &
6 actions of self harm, cutting, suicidiatity [sic] and apathy.” *Id.* Despite these alleged
7 harms, Plaintiff presents no facts from which the Court could infer that he has
8 expressed intentions of self-harm and has not been treated.

9 Regardless, the failure to comply with a stated prison policy is not a *per se*
10 violation of a clearly established constitutional right. *See Davis v. Sherer*, 468 U.S.
11 183, 193–95 (1984); *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009).
12 Furthermore, “[u]nless there is a breach of constitutional rights, . . . § 1983 does not
13 provide redress in federal court for violations of state law.” *Samson v. City of*
14 *Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012) (alteration in original)
15 (citation omitted).

16 Plaintiff is advised that 18 U.S.C. §§ 241 and 242 are criminal or
17 jurisdictional statutes that provide no private right of action. *Aldabe v. Aldabe*, 616
18 F.2d 1089, 1092 (9th Cir. 1980). Only a federal grand jury or United States attorney
19 may initiate such criminal charges. Accordingly, any claims under 18 U.S.C. §§ 241
20 and 242 would be subject to dismissal.

21 / / /

1 To state a cause of action under 42 U.S.C. § 1985(3), a plaintiff must allege:
2 (1) a conspiracy, (2) to deprive any person or class of persons of the equal protection
3 of the laws, (3) an act by one of the conspirators in furtherance of the conspiracy,
4 and (4) a personal injury, property damage or deprivation of any right or privilege of
5 a citizen of the United States. *Gillispie v. Civiletti*, 629 F.2d 637, 641 (9th Cir.
6 1980); *Griffin v. Breckenridge*, 403 U.S. 88, 102–03 (1971). A racial, or perhaps
7 otherwise class-based, invidiously discriminatory animus is an indispensable
8 element of a section 1985(3) claim. *Sprewell v. Golden State Warriors*, 266 F.3d
9 979, 989 (9th Cir. 2001) (quotations and citation omitted). Restraint must be
10 exercised in extending section 1985(3) beyond racial prejudice. *Butler v. Elle*, 281
11 F.3d 1014, 1028 (9th Cir. 2002) (citation omitted).

12 In interpreting these standards, the Ninth Circuit has held that a claim under §
13 1985 must allege specific facts to support the allegation that defendants conspired
14 together. *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir.
15 1988). A mere allegation of conspiracy without factual specificity is insufficient to
16 state a claim under 42 U.S.C. § 1985. *Id.*; *Sanchez v. City of Santa Anna*, 936 F.2d
17 1027, 1039 (9th Cir. 1991).

18 Here, Plaintiff does not state how any defendants conspired together to deny
19 Plaintiff his rights. In addition, there are no facts alleged that defendants acted with a
20 racial or class-based discriminatory animus. Accordingly, Plaintiff fails to state a
21 claim of conspiracy under § 1985. Because an action under 42 U.S.C. § 1986 is

1 valid only where there is a valid § 1985(3) claim, Plaintiff's § 1986 claim is also
2 subject to dismissal. *See Karim-Panahi*, 839 F.2d at 626.

3 RETALIATION

4 Plaintiff states that when he “‘grieved’ the matters, he was Retaliated Against
5 in violation of his first Amendment Rights, and 8th Amendment prohibition Against,
6 cruel & unusual punishments.” ECF No. 21 at 9. These conclusory assertions do not
7 state a cognizable retaliation claim.

8 “Within the prison context, a viable claim of First Amendment retaliation
9 entails five basic elements: (1) An assertion that a state actor took some adverse
10 action against an inmate (2) because of (3) that prisoner's protected conduct, and that
11 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5)
12 the action did not reasonably advance a legitimate correctional goal,” *Rhodes v.*
13 *Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005); *accord Watison v. Carter*, 668 F.3d
14 1108, 1114–15 (9th Cir. 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.
15 2009). To the extent Plaintiff claims that he was “punished” for filing grievances, he
16 did not support this conclusory assertion with any facts.

17 Clearly, regulating the volume of grievances so that a single prisoner does not
18 abuse the process would reasonably advance legitimate correctional goals of
19 maintaining order and discipline. In any event, it appears that Plaintiff obtained
20 some type of recourse at headquarters when the Grievance Program Manager, who is
21 not named as a Defendant to this action, noted on an unspecified date that Plaintiff's

1 “concerns were valid.” *Id.* at 4. Plaintiff’s allegations fail to state a plausible claim
2 of retaliation.

3 Furthermore, claims of retaliation in connection with prison disciplinary
4 proceedings would necessarily imply the invalidity of those proceedings, and are not
5 cognizable under section 1983, absent a showing that the disciplinary action has
6 been previously invalidated. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *see*
7 *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir.1997) (applying *Balisok* to dismiss
8 action in which a prisoner sought relief based on allegations that prison officials
9 relied on false information to find him ineligible for parole). Plaintiff does not make
10 this showing. Therefore, his claims of unspecified retaliatory punishments are
11 precluded because a finding in Plaintiff’s favor on such claims would render any
12 disciplinary actions taken against him invalid. Plaintiff has failed to state a
13 retaliation claim upon which relief may be granted.

14 Although granted the opportunity to do so, Plaintiff has failed to state a
15 claim upon which relief may be granted. Accordingly, **IT IS ORDERED** that this
16 action is **DISMISSED WITH PREJUDICE** for failure to state a claim upon
17 which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

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

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

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

10 **DATED** February 2, 2022.

11 s/ Rosanna Malouf Peterson
12 ROSANNA MALOUF PETERSON
13 United States District Judge
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