

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

Mar 11, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GRAHAM SHERRILL,

Plaintiff,

v.

ROBYN FAIRBURN, SGT.
PATRICK STRAND and SGT.
ACALLA

Defendants.

NO: 2:21-CV-00309-RMP

ORDER DISMISSING ACTION
WITH PREJUDICE

1915(g)

BEFORE THE COURT is Plaintiff Graham Sherrill's Second Amended Complaint, ECF No. 18. This document was mailed to the Court, and Plaintiff was again reminded of his obligation to participate in the Prison E-filing Program. ECF No. 19. Plaintiff, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

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SECOND AMENDED COMPLAINT

1 As a general rule, an amended complaint supersedes the original complaint
2 and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 928
3 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint
4 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
5 F.2d 565, 567 (9th Cir. 1987) *overruled in part by Lacey*, 693 F.3d at 928 (any
6 claims voluntarily dismissed are considered to be waived if not re-pled). Liberally
7 construing the Second Amended Complaint in the light most favorable to Plaintiff,
8 the Court finds that it does not cure the deficiencies of the prior complaints.

9 In Count I, Plaintiff asserts violations of due process under the Fourteenth
10 Amendment, interference with “legal access rights” and First Amendment
11 violations. ECF No. 18 at 4. He states that unspecified “Defendants did hinder,
12 delay access to legal law library. Plaintiff needing and asking for research and
13 materials, for researching of case law for various court cases, needing case law and
14 that of pleadings for Defendants did fail to perform a duty that he/she is required to
15 do and which caused the constitutional violations.” *Id.* at 4–5 (as written in
16 original). Plaintiff contends that he was not given a “hearing or to be heard
17 regarding such unlawful seizure of personal property when contested by plaintiff.”
18 *Id.* at 5 (as written in original).

19 In Count II, Plaintiff asserts “bad faith” retaliation under the First
20 Amendment. He claims unspecified Defendants “did violate cruel & unusual
21 punishment acting in bad faith by Arbitrarily refusing/Rejecting neglecting unto

1 improper Grievance procedures – applications. Against prison officials . . .” *Id.* at
2 8 (as written in original). Plaintiff states that “Defendants Actions of bad faith
3 saying watch callout and was not on call out is improper and denial of proper
4 procedures and meaningful access to the law library.” *Id.*

5 In Count III, Plaintiff asserts deliberate indifference under the Eighth
6 Amendment, as well as “equal protection” and “conspiracy.” He states,
7 “Defendants did deny Plaintiff Redress of Grievances, in conspiracy pursuant to 42
8 U.S.C. § 1985 & 1986 by their intentional collaboration with other Also in direct
9 violation of 18 U.S.C. § 242 “Deprivation of Rights under color of law,” And
10 various state Regulations. Defendants through a “code of silence & officials
11 covering for each other’s violation of prisoners rights & statutorial rights Plaintiff
12 Sherrill was given sanctions & punitive measure.” *Id.* at 10–11 (as written in
13 original). Plaintiff has presented no factual allegations supporting these conclusory
14 assertions.

15 **PROPERTY DEPRIVATION**

16 As the Court informed Plaintiff on numerous occasions, a claim of the
17 negligent or intentional unauthorized deprivation of property by state officials does
18 not state a federal cause of action under section 1983 if the plaintiff has an
19 adequate post-deprivation state remedy. *Hudson v. Palmer*, 468 U.S. 517, 533
20 (1984); *Parratt v. Taylor*, 451 U.S. 527, 544 (1981), overruled on other grounds by
21 *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (holding that negligent loss of

1 property is not actionable under the Due Process Clause). Washington law
2 provides that prisoners, who believe that property of value belonging to them has
3 been lost or damaged due to staff negligence, may file a claim pursuant to RCW
4 4.92.100. *See also* WAC 137-36-060.

5 Because Washington State provides Plaintiff an adequate post-deprivation
6 state remedy, regardless of whether he is satisfied with that remedy, his section
7 1983 personal property claim lacks an arguable basis in law. Therefore, Plaintiff
8 has failed to state a claim regarding his property upon which relief may be granted.

9 GRIEVANCES

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

16 The failure of prison officials to entertain a prisoner's administrative
17 grievance does not violate his or her constitutional rights because the right to
18 petition the government is the right of access to the courts, not the administrative
19 process. *See Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991); *see also Baltoski v.*
20 *Pretorius*, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003) ("The right to petition the
21 government for redress of grievances, however, does not guarantee a favorable

1 response, or indeed any response, from state officials.”). Plaintiff’s assertions
2 regarding the processing of his grievances do not state a due process claim upon
3 which relief may be granted.

4 ACCESS TO THE COURTS

5 Under the First and Fourteenth Amendments to the United States Constitution,
6 state prisoners have a right of access to the courts. *Lewis v. Casey*, 518 U.S. 343,
7 346 (1996). The right of access is limited to complaints in direct criminal appeals,
8 habeas petitions, and civil rights actions. *Id.* at 354; *Simmons v. Sacramento Cty.*
9 *Super. Ct.*, 318 F.3d 1156, 1159–60 (9th Cir. 2003) (explaining that “a prisoner has
10 no constitutional right of access to the courts to litigate an unrelated civil claim.”).

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

3 “Because *Bounds* did not create an abstract, freestanding right to a law
4 library or legal assistance, an inmate cannot establish relevant actual injury simply
5 by establishing that his prison’s law library or legal assistance program is subpar in
6 some theoretical sense.” *Lewis*, 518 U.S. at 351. “[A]n inmate must show that
7 official acts or omissions ‘hindered his efforts to pursue a [non-frivolous] legal
8 claim.” *Phillips*, 588 F.3d at 655 (*citing Lewis*, 518 U.S. at 351).

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

16 RETALIATION

17 “Within the prison context, a viable claim of First Amendment retaliation
18 entails five basic elements: (1) An assertion that a state actor took some adverse
19 action against an inmate (2) because of (3) that prisoner's protected conduct, and that
20 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5)
21 the action did not reasonably advance a legitimate correctional goal,” *Rhodes v.*

1 *Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005); *accord Watison v. Carter*, 668 F.3d
2 1108, 1114–15 (9th Cir. 2012); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.
3 2009). Plaintiff presents no facts from which the Court could infer that identified
4 Defendants retaliated against him.

5 **EIGHTH AMENDMENT**

6 Apart from his conclusory assertions of “deliberate indifference,” Plaintiff has
7 presented no facts from which the Court could infer that identified Defendants acted
8 with deliberate indifference to plaintiff's health or safety. *Farmer v. Brennan*, 511
9 U.S. 825, 835 (1994). Deliberate indifference exists when the prison official “acted
10 or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at
11 842. Negligence is not actionable under section 1983. *Davidson v. Cannon*, 474
12 U.S. 344, 347–48 (1986). Plaintiff has failed to state an Eighth Amendment claim
13 upon which relief may be granted. In addition, his conclusory assertions of “equal
14 protection” and “conspiracy,” in the absence of any factual allegations against
15 identified Defendants as to when or where any constitutional deprivation occurred,
16 do not state a claim upon which the Court may grant relief.

17 Although granted the opportunity to do so, Plaintiff has failed to state a
18 claim upon which relief may be granted. Accordingly, **IT IS ORDERED** that this
19 action is **DISMISSED WITH PREJUDICE** for failure to state a claim upon
20 which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).
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1 Pursuant to 28 U.S.C. § 1915(g) a prisoner who brings three or more civil
2 actions or appeals which are dismissed as frivolous or for failure to state a claim
3 will be precluded from bringing any other civil action or appeal *in forma pauperis*
4 “unless the prisoner is under imminent danger of serious physical injury.” 28
5 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions of 28**
6 **U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the**
7 **three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his**
8 **ability to file future claims *in forma pauperis*.**

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

14 **DATED** March 11, 2022.

15 s/ Rosanna Malouf Peterson
16 ROSANNA MALOUF PETERSON
17 Senior United States District Judge
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