

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Hairston v. Juarez

No. 22-cv-01801-BAS-WVG (S.D. Cal. Mar. 10, 2023) · No. 22-cv-01801-BAS-WVG · Decided March 10,
2023

SUMMARY

The United States District Court for the Southern District of California granted Kevin Tyrone Izal Hairston leave to proceed in forma pauperis and assessed an initial partial filing fee. The court found a plausible Eighth Amendment excessive-force claim against Correctional Officer Juarez, dismissed the First Amendment retaliation claim for failure to state a claim, and granted leave to proceed on the excessive-force claim or amend the complaint.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cynthia Bashant
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 10, 2023
DOCKET	22-cv-01801-BAS-WVG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a prisoner civil-rights action under 42 U.S.C. § 1983. After the action was initially dismissed without prejudice for failure to prepay the filing fee or seek in forma pauperis status, Plaintiff filed an IFP motion. The district court granted IFP status and screened the complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).
STANDARD OF REVIEW	Under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), the court must dismiss a complaint or portion of a complaint that is frivolous, malicious, fails to state a claim, or seeks damages from an immune defendant. The failure-to-state-a-claim standard is the same as the Federal Rule of Civil Procedure 12(b)(6) standard. Factual allegations are accepted as true and reasonable inferences are drawn in the plaintiff's favor, but conclusory allegations and threadbare recitals are insufficient.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Kevin Tyrone Izal Hairston v. K. Juarez

TOPICS

prisoners rights

civil rights

cruel and unusual punishment

first amendment

civil procedure

PRACTICE AREAS

prisoner civil rights

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff qualified for leave to proceed in forma pauperis under 28 U.S.C. § 1915.
2. Whether the allegations that a correctional officer struck and pepper-sprayed Plaintiff while he was restrained plausibly stated an Eighth Amendment excessive-force claim.
3. Whether the allegation that the correctional officer threatened future retaliation after Plaintiff announced an intent to file a grievance plausibly stated a First Amendment retaliation claim.

HOLDINGS

1. Plaintiff was granted leave to proceed in forma pauperis. The court assessed an initial partial filing fee of \$43.87, subject to the statutory protection that the fee would not be collected if insufficient funds were available.
2. The complaint plausibly alleged an Eighth Amendment excessive-force claim sufficient to survive initial screening.
3. The First Amendment retaliation claim was dismissed sua sponte for failure to state a claim.
4. Plaintiff was granted 45 days either to proceed solely on the Eighth Amendment claim against Juarez or to file a complete amended complaint curing the identified pleading deficiencies.

KEY QUOTATIONS

“The Court finds Plaintiff’s Complaint alleges a plausible excessive force claim against Defendant sufficient to survive the “low threshold” set for screening as required by 28 U.S.C. § 1915(e)(2) and § 1915A(b).” (at 5)

“Accordingly, the Complaint fails to state a First Amendment retaliation claim and cannot survive screening under 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A.” (at 6)

FACTUAL BACKGROUND

While incarcerated at California State Prison, Sacramento, Plaintiff alleged that after an incident had ended and he was on the ground in waist restraints, Defendant Juarez struck him in the head and face five or six times and pepper-sprayed him. Plaintiff further alleged that he was left in a cell for approximately forty to forty-five minutes while unable to breathe from the pepper spray, eventually receiving decontamination. After Plaintiff stated that he intended to file a grievance concerning the use of force, he alleged that Juarez threatened future retaliation.

PROCEDURAL HISTORY

Hairston filed the action on November 14, 2022, alleging that Correctional Officer Juarez used excessive force after an incident and threatened retaliation when Hairston said he would file a grievance. The court initially dismissed the case without prejudice because Plaintiff had not paid the filing fee or filed an IFP motion. After Plaintiff submitted the IFP motion and supporting financial records, the court granted IFP status, found the Eighth Amendment excessive-force claim plausible, dismissed the First Amendment retaliation claim sua sponte for failure to state a claim, and granted 45 days to proceed only on the excessive-force claim or amend the complaint.

DISPOSITION

other

CASES CITED

- *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007)
- *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999)
- *Bruce v. Samuels*, 577 U.S. 82, 84 (2016)
- *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc)
- *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
- *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014)
- *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)
- *Watson v. Carter*, 668 F.3d 1108, 1112, 1114 (9th Cir. 2012)
- *Wilhelm v. Rotman*, 680 F.3d 1113, 1121, 1123 (9th Cir. 2012)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)
- *Cahill v. Liberty Mutual Insurance Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996)
- *Hudson v. McMillian*, 503 U.S. 1, 5–7 (1992)
- *Carrasco v. Cababe*, No. 1:19-cv-00724-LJO-JDP, 2019 WL 6170118, at *2 (E.D. Cal. Nov. 20, 2019)
- *Lees v. Singsong*, No. 19-cv-01603-HSG, 2021 WL 1925728, at *2 (N.D. Cal. 2021)
- *Brodheim v. Cry*, 584 F.3d 1262, 1269–70 (9th Cir. 2009)
- *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)
- *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990)
- *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012)

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