

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
KENTUCKY

Dennis Keith Sims v. Theodore H. Lavit & Associates

Sims · No. 3:25-CV-P553-JHM · Decided January 7, 2026

SUMMARY

The United States District Court for the Western District of Kentucky dismissed a pro se prisoner’s 42 U.S.C. § 1983 action against his defense attorney. The court held that the attorney was not acting under color of state law, that ineffective-assistance claims must be pursued through habeas corpus, and that the related state-law malpractice claim would be dismissed without prejudice.

CASE DETAILS

COURT	United States District Court for the Western District of Kentucky
WRITING FOR THE COURT	Joseph H. McKinley Jr.
JURISDICTION	United States District Court for the Western District of Kentucky
DECIDED	January 7, 2026
DOCKET	3:25-CV-P553-JHM
DISPOSITION	dismissed
PROCEDURAL POSTURE	Initial screening of a pro se prisoner's in forma pauperis complaint under 28 U.S.C. § 1915(e).
STANDARD OF REVIEW	The court reviewed the in forma pauperis complaint under 28 U.S.C. § 1915(e)(2)(B), dismissing if the action was frivolous or malicious, failed to state a claim, or sought monetary relief from an immune defendant.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion
PARTIES	Dennis Keith Sims v. Theodore H. Lavit & Associates

TOPICS

- section 1983
- prisoners rights
- civil rights
- post-conviction relief
- subject matter jurisdiction

PRACTICE AREAS

- civil rights
- constitutional law
- prisoner litigation
- federal jurisdiction

QUESTIONS PRESENTED

1. Whether a defense attorney may be sued under 42 U.S.C. § 1983 for alleged ineffective assistance and malpractice.
2. Whether ineffective assistance of counsel is cognizable in a § 1983 action.
3. Whether the court should exercise supplemental jurisdiction over the state-law legal-malpractice claim after dismissing the federal claims.
4. Whether the complaint established diversity jurisdiction.

HOLDINGS

1. A defense attorney, whether public or private, does not act under color of state law merely by representing a criminal defendant; therefore, Sims failed to state a § 1983 claim against Lavit.
2. Ineffective assistance of counsel is not cognizable under § 1983 and must instead be pursued through a habeas petition under 28 U.S.C. § 2254.
3. The court declined to exercise supplemental jurisdiction over Sims's state-law legal-malpractice claim after dismissing all claims within its original jurisdiction, and dismissed the state-law claim without prejudice.
4. The complaint did not establish diversity jurisdiction because Sims did not allege that he and Lavit were citizens of different states.

KEY QUOTATIONS

“It is firmly established that a defense attorney, regardless of whether he or she is a public defender or private attorney, does not act under color of state law for purposes of § 1983.” (at 3)

“Ineffective assistance of counsel is not a cognizable claim under § 1983, . . . [and] must be brought in a habeas petition under 28 U.S.C. § 2254, and not in an action under § 1983.” (at 3)

FACTUAL BACKGROUND

Dennis Keith Sims, an inmate at the Luther Lockett Correctional Complex, alleged that he was convicted of two counts of first-degree sexual abuse on February 13, 2023, and sentenced to twenty years' imprisonment. He claimed that his defense attorney, Theodore H. Lavit, failed to meet with him, obtain or present exculpatory evidence, secure effective witnesses, and provide discovery materials. Sims sought compensatory and punitive damages and injunctive relief under 42 U.S.C. § 1983.

PROCEDURAL HISTORY

Sims filed a 42 U.S.C. § 1983 action seeking damages and injunctive relief against his defense attorney, alleging ineffective assistance and legal malpractice arising from his state criminal conviction. The district court screened the complaint under 28 U.S.C. § 1915(e), dismissed the federal claims for failure to state a claim, declined supplemental jurisdiction over the state-law malpractice claim, and dismissed that claim without prejudice.

DISPOSITION

dismissed

CASES CITED

- McGore v. Wigglesworth, 114 F.3d 601, 608-09 (6th Cir. 1997)
- Jones v. Bock, 549 U.S. 199 (2007)
- Haines v. Kerner, 404 U.S. 519 (1972)
- McDonald v. Hall, 610 F.2d 16, 19 (1st Cir. 1979)
- Clark v. Nat'l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975)
- Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Flint v. Ky. Dep't of Corr., 270 F.3d 340, 351 (6th Cir. 2001)
- Christy v. Randlett, 932 F.2d 502, 504 (6th Cir. 1991)
- Polk Cnty. v. Dodson, 454 U.S. 312, 325 (1981)
- Otworth v. Vanderploeg, 61 F. App'x 163, 165 (6th Cir. 2003)
- Moody v. Benton Cnty. Det. Ctr., No. 1:25-CV-01038-SHM-TMP, 2025 U.S. Dist. LEXIS 166814, at *12-13 (W.D. Tenn. Aug. 27, 2025)
- Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)
- Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE DENNIS KEITH SIMS PLAINTIFF v. CIVIL ACTION NO. 3:25-CV-P553-JHM THEODORE H. LAVIT & ASSOCIATES DEFENDANT MEMORANDUM OPINION Plaintiff Dennis Keith Sims filed the instant pro se prisoner 42 U.S.C. § 1983 action proceeding in forma pauperis.

The complaint is now before the Court for initial screening pursuant to 28 U.S.C. § 1915(e). For the reasons stated below, the Court will dismiss the action. I. SUMMARY OF FACTUAL ALLEGATIONS Plaintiff, an inmate at the Luther Lockett Correctional Complex, sues Theodore H. Lavit, whom he identifies as an attorney employed by Theodore H. Lavit & Associates. Plaintiff asserts that on February 13, 2023, he was found guilty of two counts of sexual abuse in the first degree and sentenced to twenty years' incarceration.

He states as follows: [T]his conviction was the direct result of the incompetence, malpractice, and misfeasance demonstrated in Theodore H. Lavit's mishandling of my defense. As such, I was deprived of Effective Assistance of Counsel and Due Process as are guaranteed by the United States Constitution. Mr. Lavit's continuous refusals to meet with me to discuss trial strategy, or even obtain exculpatory evidence that was readily available, and his failures to introduce

exculpatory evidence into the record or secure any witnesses able to effectively challenge the evidence presented against me, are the direct cause of my incarceration.

Had Mr. Lavit performed a minimum effort in his duty as Representing Counsel, I would never have been convicted, and would not now be deprived of my liberty and free to continue working and contributing to society. Mr. Lavit even failed in his duty to provide me with copies of the Discovery File for my case thus impeding any timely attempts at an appeal. I did not receive a copy of my Discovery until I had been incarcerated, for over two (2) years.

As relief, Plaintiff seeks compensatory and punitive damages and injunctive relief. II. STANDARD Because Plaintiff is proceeding in forma pauperis, the Court must review the complaint under 28 U.S.C. § 1915(e). *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007).

On review, a district court must dismiss a case at any time if it determines that the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Although courts are to hold pro se pleadings “to less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519 (1972), this duty to be less stringent “does not require [the Court] to conjure up unpled allegations,” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979), or to create a claim for a plaintiff. *Clark v. Nat’l Travelers Life Ins.*

Co., 518 F.2d 1167, 1169 (6th Cir. 1975). To command otherwise would require courts “to explore exhaustively all potential claims of a pro se plaintiff, [and] would also transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir.

1985). III. ANALYSIS Section 1983 creates a cause of action against any person who, under color of state law, causes the deprivation of a right secured by the Constitution or the laws of the United States. A claim under § 1983 must therefore allege two elements: (1) the deprivation of federal statutory or constitutional rights by (2) a person acting under color of state law.

West v. Atkins, 487 U.S. 42, 48 (1988); *Flint v. Ky. Dep’t of Corr.*, 270 F.3d 340, 351 (6th Cir. 2001). Absent either element, no § 1983 claim exists. *Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991). It is firmly established that a defense attorney, regardless of whether he or she is a public defender or private attorney, does not act under color of state law for purposes of § 1983.

Polk Cnty. v. Dodson, 454 U.S. 312, 325 (1981); *Otworth v. Vanderploeg*, 61 F. App’x 163, 165 (6th Cir. 2003) (“A lawyer representing a client is not, by virtue of being an officer of the court, a state actor under color of state law within the meaning of § 1983.”).

Here, Defendant was Plaintiff's defense attorney in his state court criminal proceedings and therefore is not a state actor. As such, Plaintiff fails to state a claim under § 1983 against him. Additionally, "[i]neffective assistance of counsel is not a cognizable claim under § 1983,... [and] must be brought in a habeas petition under 28 U.S.C. § 2254, and not in an action under § 1983." *Moody v. Benton Cnty.*

Det. Ctr., No. 1:25-CV-01038-SHM-TMP, 2025 U.S. Dist. LEXIS 166814, at *12-13 (W.D. Tenn. Aug. 27, 2025) (citing, *inter alia*, *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973)). In regard to Plaintiff's claim for legal malpractice, that is a claim under state law, and the Court declines to exercise supplemental jurisdiction over it. See 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim... if... the district court has dismissed all claims over which it has original jurisdiction.").

Further, because Plaintiff does not allege that he and Defendant are citizens of different states, he cannot establish this Court's diversity jurisdiction. See 28 U.S.C. § 1332(a) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States;...."); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) ("[D]iversity jurisdiction does not exist unless each defendant is a citizen of a different State from each plaintiff").

Consequently, the state-law claim will be dismissed without prejudice. IV. CONCLUSION For the foregoing reasons, the Court will dismiss the action by separate Order. Date: January 7, 2026 Ar layf Joseph H. McKinley Jr., Senior Judge United States District Court ce: Plaintiff, pro se 4414.010