

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PRECEDENTIAL VALUE	unpublished district court memorandum opinion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 Luckett 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)