

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Sean L. Casey, II v. Patrick Covello, et al.

No. 2:22-cv-2240 CKD P · No. No. 2:22-cv-2240 CKD P · Decided March 3, 2023

OPINION

(PC) Casey v. Covello

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 SEAN L. CASEY, II, No. 2:22-cv-2240 CKD P

12 Plaintiff, 13 v. ORDER 14 PATICK COVELLO, et al., 15 Defendants. 16 17 Plaintiff is a
California prisoner proceeding pro se with an action for violation of civil 18 rights under 42
U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 19 pursuant to 28
U.S.C. § 636(b)(1). 20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has
submitted a 21 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request
will be granted. 22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28
U.S.C. §§ 23 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency
to collect the 24 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of
the Court. 25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the
preceding 26 month's income credited to plaintiff's prison trust account. These payments will be
forwarded by 27 the appropriate agency to the Clerk of the Court each time the amount in
plaintiff's account 28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). 1
The court is required to screen complaints brought by prisoners seeking relief against a 2
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 3
court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
6 Having conducted the required screening with respect to plaintiff's complaint (ECF No. 7 1), the
court finds that plaintiff may proceed on a claim based upon retaliation for protected 8 conduct in
violation of the First Amendment against defendant Justinich. 9 With respect to the other claims
and defendants, the allegations do not amount to claims 10 upon which plaintiff may proceed. At
this point, plaintiff has two options: 1) proceed 11 immediately on the claim identified above; or
2) attempt to cure the deficiencies in plaintiff's 12 complaint in an amended complaint. In

considering whether to amend, the court advises plaintiff 13 as follows: 14 1. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link 15 or connection between a defendant's actions and the claimed deprivation. *Rizzo v. Goode*, 423 16 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil 17 rights violations are not sufficient. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 18 2. In general, plaintiff's allegations should not be vague or conclusory. Plaintiff must 19 point to specific acts in order to establish an actionable claim. 20 3. In order to state a cognizable claim for violation of due process during things such as a 21 prisoner disciplinary hearing which did not result in the loss of good conduct sentence credit, 22 plaintiff must allege facts which suggest that he was deprived of a protected liberty interest. Such 23 liberty interests are "generally limited to freedom from restraint which, while not exceeding the 24 sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of 25 its own force, [citations omitted], nonetheless imposes atypical and significant hardship on the 26 inmate in relation to the ordinary incidents of prison life." *Sandin v. Connor*, 515 U.S. 472, 484 27 (1995). 28 /////] 4. Any challenge to prisoner disciplinary proceedings which resulted in the revocation of 2 || good conduct sentence credit must be brought in a petition for writ of habeas corpus and not a 42 3 | U.S.C. § 1983 action unless the revoked sentence credit has been restored. See *Edwards v. 4 | Balisok*, 520 U.S. 641, 646-47 (1996). 5 5. The Equal Protection Clause generally protects against unequal treatment as a result of 6 || intentional or purposeful discrimination. *Freeman v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997). 7 In accordance with the above, IT IS HEREBY ORDERED that: 8 1. Plaintiffs request for leave to proceed in forma pauperis (ECF No. 2) is granted. 9 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees 10 || shall be collected and paid in accordance with this court's order to the Director of the California 11 || Department of Corrections and Rehabilitation filed concurrently herewith. 12 3. Plaintiff granted 21 days within which to complete and return the attached form 13 || notifying the court whether he wants to proceed on the claim identified in this order or file an 14 || amended complaint in an attempt to cure the deficiencies in his original complaint. If plaintiff 15 || does not return the form, this action will proceed on the claim described above. 16 || Dated: March 3, 2023 / 20 } it | / de □
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7 CAROLYN K DELANEY

18 UNITED STATES MAGISTRATE JUDGE

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9 UNITED STATES DISTRICT COURT

10 FOR THE EASTERN DISTRICT OF CALIFORNIA

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12 SEAN L. CASEY, II, No. 2:22-cv-2240 CKD P

13 Plaintiff,

14 v. PLAINTIFF'S NOTICE OF

15 PATRICK COVELLO, et al., HOW TO PROCEED

16 Defendants. 17

18 Check one: 19 _____ Plaintiff wants to proceed immediately on a claim based upon retaliation
for protected 20 conduct in violation of the First Amendment against defendant Justinich. 21 OR

22 _____ Plaintiff wants time to file an amended complaint. 23 DATED: 24 25 Plaintiff's
Signature 26 27 28