

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Justin M. Lucero v. Sedgwick County Sheriff's Office

Lucero · No. 25-3229-JWL · Decided December 1, 2025

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS JUSTIN M. LUCERO, Plaintiff, v. CASE NO. 25-3229-JWL SEDGWICK COUNTY SHERIFF'S OFFICE, Defendant. MEMORANDUM AND ORDER TO SHOW CAUSE Plaintiff Justin M. Lucero is hereby required to show good cause, in writing to the undersigned, why this matter should not be dismissed due to the deficiencies in Plaintiff's Complaint that are discussed herein.

Plaintiff is also given the opportunity to file an amended complaint to cure the deficiencies. I. Nature of the Matter before the Court Plaintiff brings this pro se civil rights case under 42 U.S.C. § 1983. Plaintiff is in custody at the Sedgwick County Jail in Wichita, Kansas ("SCJ"). Plaintiff has paid the filing fee.

As Count I, Plaintiff alleges that on October 10, 2025, Deputy Clark did not serve a meal until an hour after it was cooked at the SCJ. (Doc. 4, at 3.) He alleges that the food arrived at the pod at 11:45 am, but the food was not served until 12:45 pm when Deputy Clark set the food on the ground and then fed the food to the inmates. Id. As Count II, Plaintiff alleges that on September 21, 2025, Sgt.

Foster threatened inmates by telling Plaintiff and two other inmates that he was going to open their doors and let them "box." Id. As Count III, Plaintiff alleges that on September 2, 2025, jail staff failed to keep a clean environment at the SCJ due to mold in the upper-level shower. Id. at 4. He also claims that "mice and roaches run free" and the floors are rarely cleaned.

Id. Plaintiff names the Sedgwick County Sheriff's Office as the sole defendant. For relief, Plaintiff seeks \$3,000,000 and an O/R bond. Id. at 5. II. Statutory Screening of Prisoner Complaints The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a).

The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2). "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted); *Northington v. Jackson*, 973 F.2d 1518, 1523 (10th Cir.

1992). A court liberally construes a pro se complaint and applies “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). In addition, the court accepts all well-pleaded allegations in the complaint as true. *Anderson v. Blake*, 469 F.3d 910, 913 (10th Cir. 2006).

On the other hand, “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” dismissal is appropriate. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007). A pro se litigant’s “conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.

1991). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires ‘more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.’” *Twombly*, 550 U.S. at 555 (citations omitted).

The complaint’s “factual allegations must be enough to raise a right to relief above the speculative level” and “to state a claim to relief that is plausible on its face.” *Id.* at 555, 570. The Tenth Circuit Court of Appeals has explained “that, to state a claim in federal court, a complaint must explain what each defendant did to [the pro se plaintiff]; when the defendant did it; how the defendant’s action harmed [the plaintiff]; and, what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E.*

Agents, 492 F.3d 1158, 1163 (10th Cir. 2007). The court “will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (citation omitted).

The Tenth Circuit has pointed out that the Supreme Court’s decisions in *Twombly* and *Erickson* gave rise to a new standard of review for § 1915(e)(2)(B)(ii) dismissals. See *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007) (citations omitted); see also *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009).

As a result, courts “look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief.” *Kay*, 500 F.3d at 1218 (citation omitted). Under this new standard, “a plaintiff must ‘nudge his claims across the line from conceivable to plausible.’” *Smith*, 561 F.3d at 1098 (citation omitted). “Plausible” in this context does not mean “likely to be true,” but rather refers “to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent,” then the plaintiff has not “nudged [his] claims across the line from conceivable to plausible.” *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir.

2008) (citing *Twombly*, 127 S. Ct. at 1974). III. DISCUSSION 1. Conditions of Confinement A prison official violates the Eighth Amendment when two requirements are met.¹ *Farmer v.*

Brennan, 511 U.S. 825, 834 (1994). “First, the deprivation alleged must be, objectively, ‘sufficiently serious.’” *Id.* To satisfy the objective component, a prisoner must allege facts showing he or she is “incarcerated under conditions posing a substantial risk of serious harm.” *Id.*; *Martinez v. Garden*, 430 F.3d 1302, 1304 (10th Cir.

2005). The Eighth Amendment requires prison and jail officials to provide humane conditions of confinement guided by “contemporary standards of decency.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The Supreme Court has acknowledged that the Constitution “‘does not mandate comfortable prisons,’ and only those deprivations denying ‘the minimal civilized measure of life’s necessities’ are sufficiently grave to form the basis of an Eighth Amendment violation.” *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (internal citations omitted).

Indeed, prison conditions may be “restrictive and even harsh.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). “Under the Eighth Amendment, (prison) officials must provide humane conditions of confinement by ensuring inmates receive the basic necessities of adequate food, clothing, shelter, and medical care and by taking reasonable measures to guarantee the inmates’ safety.” *McBride v. Deer*, 240 F.3d 1287, 1291 (10th Cir.

2001) (citation omitted). 1 It appears that Plaintiff may be a pretrial detainee. The Tenth Circuit has held that a pretrial detainee’s claims regarding conditions of confinement are governed by the Due Process Clause, and that “the Eighth Amendment standard provides the benchmark for such claims.” *Routt v. Howard*, 764 F. App’x 762, 770 (10th Cir. 2019) (unpublished) (quoting *Craig v. Eberly*, 164 F.3d 490, 495 (10th Cir.

1998)); see also *Hooks v. Atoki*, 983 F.3d 1193, 1203–04 (10th Cir. 2020) (declining to extend *Kingsley*’s exclusively objective standard for pretrial detainees’ excessive force claims to Fourteenth Amendment deliberate indifference claims).

The second requirement for an Eighth Amendment violation “follows from the principle that ‘only the unnecessary and wanton infliction of pain implicates the Eighth Amendment.’” *Farmer*, 511 U.S. at 834. Prison officials must have a “sufficiently culpable state of mind,” and in prison-conditions cases that state of mind is “deliberate indifference” to inmate health or safety.

Id. “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837. “The Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it outlaws cruel and unusual ‘punishments.’” *Id.* It is not enough to establish that the official should have known of the risk of harm.

Id. Because the sufficiency of a conditions-of-confinement claim depends upon “the particular facts of each situation; the ‘circumstances, nature, and duration’ of the challenged conditions must be carefully considered.” *Despain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) (quoting *Johnson*

v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)). “While no single factor controls... the length of exposure to the conditions is often of prime importance.” *Id.* As the severity of the conditions to which an inmate is exposed increases, the length of exposure required to make out a constitutional violation decreases.

Accordingly, “minor deprivations suffered for short periods would not rise to an Eighth Amendment violation, while ‘substantial deprivations...’ may meet the standard despite a shorter duration.” *Id.* (citations omitted). “Prisons must provide inmates with ‘nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it.” *Womble v. Chrisman*, 770 F. App’x 918, 923 (10th Cir.

2019) (citation omitted). Plaintiff alleges that one meal was served an hour after it was cooked. Plaintiff has failed to allege a sufficiently serious claim. See *Taylor v. Pittsburg, KS Police Dep’t*, 2022 WL 2274123, at *3 (D. Kan. 2022) (finding that plaintiff failed to allege specific facts indicating a substantial or immediate danger to plaintiff’s health and well-being) (citing *Toeys v. Milyard*, 563 F. App’x 640, 643, 645–46 (10th Cir.

2014) (affirming dismissal of claim involving denial of nine consecutive meals during a three-day period); *Richmond v. Settles*, 450 F. App’x 448, 456 (6th Cir. 2011) (finding the withholding of seven meals over a period of six days, “does not result in a health risk to the prisoner sufficient to qualify as a ‘wanton infliction of pain’ where the prisoner continues to receive adequate nutrition.”); *McGee v. Collett*, 2020 WL 4569155 *2 (D.

Kan. 2020) (denial of two meals during a week’s time does not state an Eighth Amendment claim)). Plaintiff also alleges that there is mold in one of the showers, there are mice and roaches, and the floors are rarely cleaned. It is unclear how long Plaintiff was exposed to the alleged conditions. Plaintiff alleges no facts showing that a defendant “both knew of and disregarded an excessive risk to [his] health or safety” related to his exposure to mold, mice, or roaches.

See *Weldon v. Ramstad-Hvass*, 512 F. App’x 783, 794 (10th Cir. 2013). A “bare allegation of [the presence of] mold... does not create a reasonable inference regarding the sort of threat to [a plaintiff’s] mental or physical well being which is necessary for violation of the Eighth Amendment.” *Cox v. Grady Cty. Detention Center*, 2008 WL 1925052, at *3–4 (W.D.

Okla. April 29, 2008) (citing *Dittmeyer v. Whetsel*, 91 F. App’x 111 (10th Cir. Feb. 11, 2004)). Plaintiffs’ allegations fail to allege a “sufficiently serious” deprivation or facts showing he is “incarcerated under conditions posing a substantial risk of serious harm.” Plaintiff has also failed to show that a defendant was deliberately indifferent regarding his conditions of confinement.

Plaintiff alleges that Sgt. Foster threatened inmates by telling Plaintiff and two other inmates that he was going to open their doors and let them “box.” The Tenth Circuit has found that “[m]ere

verbal threats or harassment do not rise to the level of a constitutional violation unless they create ‘terror of instant and unexpected death.’” *Alvarez v. Gonzales*, 155 F. App’x 393, 396 (10th Cir.

2005) (unpublished) (quoting *Northington v. Jackson*, 973 F.2d 1518, 1524 (10th Cir. 1992)). Where “the officers’ comments, although inappropriate, do not suggest a show of deadly force,” they fail “to create ‘terror of instant and unexpected death.’” *Id.*; see also *McBride v. Deer*, 240 F.3d 1287, at 1291 n.3 (10th Cir. 2001) (“[A]cts or omissions resulting in an inmate being subjected to nothing more than threats and verbal taunts do not violate the Eighth Amendment.”) (citation omitted).

Plaintiff should show good why his Eighth Amendment claims based on his conditions of confinement should not be dismissed for failure to state a claim. 2. Improper Defendant Plaintiff has named the Sedgwick County Sheriff’s Office as the sole defendant. Any claim against the Sheriff’s Office “is directed against the wrong defendant, as the Board of County Commissioners of Sedgwick County is the appropriate defendant for claims against any of its subunits.” *Brown v. Sedgwick Cty.*

Sheriff’s Office, 513 F. App’x 706, 707–08 (10th Cir. 2013) (unpublished) (citing *Hopkins v. State*, 237 Kan. 601, 702 P.2d 311, 316 (1985) (noting “line of Kansas cases which holds that subordinate government agencies do not have the capacity to sue or be sued in the absence of statute”); Kan. Stat. Ann. § 19–105 (2012)). Kansas statutory law provides that “[i]n all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be ‘The board of county commissioners of the county of _____;’....” K.S.A. § 19-105.

Even if Plaintiff were permitted to amend his complaint to substitute the appropriate defendant, his claims would fail because he has not alleged sufficient facts to show a constitutional violation by a municipal employee or a municipal policy causally connected to such a violation. See *id.* at 708.

To impose § 1983 liability on the county and its officials for acts taken by its employee, a plaintiff must show that the employee committed a constitutional violation and that a county policy or custom was “the moving force” behind the constitutional violation. *Myers v. Oklahoma Cty. Bd. of Cty. Comm’rs*, 151 F.3d 1313, 1318 (10th Cir. 1998) (citing *Monell v. Dep’t of Soc.*

Servs., 436 U.S. 658, 695 (1978)). The Supreme Court explained that in *Monell* they decided “a municipality can be found liable under § 1983 only where the municipality itself causes the constitutional violation at issue,” and “there are limited circumstances in which an allegation of a ‘failure to train’ can be the basis for liability under § 1983.” *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385–86 (1989).

Plaintiff has pointed to no policy or deficiency in the training program used by the Sheriff’s Office and no causal link between any such inadequacy and the allegedly unconstitutional acts of staff.

Plaintiff should show good cause why his claims against the Sheriff's Office should not be dismissed. 3. Relief A. Compensatory Damages Plaintiff's request for compensatory damages is barred by 42 U.S.C. § 1997e(e), because Plaintiff has failed to allege a physical injury.

Section 1997e(e) provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of Title 18)." 42 U.S.C. § 1997e(e). "The plain language of the statute does not permit alteration of its clear damages restrictions on the basis of the underlying rights being asserted." *Searles v. Van Bebber*, 251 F.3d 869, 876 (10th Cir.

2001). "The statute limits the remedies available, regardless of the rights asserted, if the only injuries are mental or emotional." *Id.* (citing *Robinson v. Page*, 170 F.3d 747, 748 (7th Cir.1999)). B. Order for an O/R Bond Plaintiff seeks to have this Court order bond in his state criminal proceedings.

The Court may be prohibited from hearing Plaintiffs' claims regarding their state court proceedings under *Younger v. Harris*, 401 U.S. 37, 45 (1971). "The Younger doctrine requires a federal court to abstain from hearing a case where...

(1) state judicial proceedings are ongoing; (2) [that] implicate an important state interest; and (3) the state proceedings offer an adequate opportunity to litigate federal constitutional issues." *Buck v. Myers*, 244 F. App'x 193, 197 (10th Cir. 2007) (unpublished) (citing *Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202, 1204 (10th Cir. 2003); see also *Middlesex Cty.*

Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)). "Once these three conditions are met, Younger abstention is non-discretionary and, absent extraordinary circumstances, a district court is required to abstain." *Buck*, 244 F. App'x at 197 (citing *Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003)).

For any plaintiff that has pending state court criminal proceedings, the first and second conditions for Younger abstention would be met because Kansas undoubtedly has an important interest in enforcing its criminal laws through criminal proceedings in the state's courts.

In *re Troff*, 488 F.3d 1237, 1240 (10th Cir. 2007) ("[S]tate control over criminal justice [is] a lynchpin in the unique balance of interests" described as "Our Federalism.") (citing *Younger*, 401 U.S. at 44). Likewise, the third condition would be met because Kansas courts provide Plaintiffs with an adequate forum to litigate his constitutional claims by way of pretrial proceedings, trial, and direct appeal after conviction and sentence, as well as post-conviction remedies.

See *Capps v. Sullivan*, 13 F.3d 350, 354 n.2 (10th Cir. 1993) ("[F]ederal courts should abstain from the exercise of... jurisdiction if the issues raised... may be resolved either by trial on the

merits in the state court or by other [available] state procedures.”) (quotation omitted); see *Robb v. Connolly*, 111 U.S. 624, 637 (1984) (state courts have obligation ‘to guard, enforce, and protect every right granted or secured by the constitution of the United States....’”); *Steffel v. Thompson*, 415 U.S. 452, 460–61 (1974) (pendant state proceeding, in all but unusual cases, would provide federal plaintiff with necessary vehicle for vindicating constitutional rights).

In *Arter v. Gentry*, the Tenth Circuit upheld a district court decision construing a pretrial detainee’s claim of excessive bail as a claim under § 2241 and denying habeas relief for failure to exhaust state court remedies and noting that the Younger abstention doctrine, “compels us to avoid interference in ongoing state proceedings when the state courts provide an adequate forum to present any federal constitutional challenges.” *Arter v. Gentry*, 201 F. App’x 653, 653–54 (10th Cir.

2006) (unpublished). And in *Tucker v. Reeve*, a state pretrial detainee challenged his pretrial detention, alleging state officials set excessive bond, denied him a speedy trial, and engaged in illegal searches and seizures. *Tucker v. Reeve*, 601 F. App’x 760 (10th Cir. 2015) (unpublished).

The Tenth Circuit upheld the district court’s application of the Younger abstention doctrine. *Id.* at 760–61. IV. Response and/or Amended Complaint Required Plaintiff is required to show good cause why Plaintiff’s claims should not be dismissed for the reasons stated herein. Plaintiff is also given the opportunity to file a complete and proper amended complaint upon court-approved forms that cures all the deficiencies discussed herein.

To add claims, significant factual allegations, or change defendants, a plaintiff must submit a complete amended complaint. See Fed. R. Civ. P. 15. An amended complaint is not simply an addendum to the original complaint, and instead completely supersedes it.

Therefore, any claims or allegations not included in the amended complaint are no longer before the court. It follows that a plaintiff may not simply refer to an earlier pleading, and the amended complaint must contain all allegations and claims that a plaintiff intends to pursue in the action, including those to be retained from the original complaint. Plaintiff must write the number of this case (25-3229-JWL) at the top of the first page of the amended complaint and must name every defendant in the caption of the amended complaint.

See Fed. R. Civ. P. 10(a). Plaintiff should also refer to each defendant again in the body of the amended complaint, where Plaintiff must allege facts describing the unconstitutional acts taken by each defendant including dates, locations, and circumstances. Plaintiff must allege sufficient additional facts to show a federal constitutional violation. Plaintiff is given time to file a complete and proper amended complaint in which Plaintiff (1) raises only properly joined claims and defendants; (2) alleges sufficient facts to state a claim for a federal constitutional violation and

show a cause of action in federal court; and (3) alleges sufficient facts to show personal participation by each named defendant.

If Plaintiff does not file an amended complaint within the prescribed time that cures all the deficiencies discussed herein, Plaintiff's claims may be dismissed without further notice. IT IS THEREFORE ORDERED BY THE COURT that Plaintiff is granted until January 5, 2026, in which to show good cause, in writing to the undersigned, why Plaintiff's Complaint should not be dismissed for the reasons stated herein.

IT IS FURTHER ORDERED that Plaintiff is also granted until January 5, 2026, in which to file a complete and proper amended complaint to cure all the deficiencies discussed herein. The Clerk is directed to send § 1983 forms and instructions to Plaintiff. IT IS SO ORDERED. Dated December 1, 2025, in Kansas City, Kansas. S/ John W. Lungstrum JOHN W. LUNGSTRUM UNITED STATES DISTRICT JUDGE