

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cone v. Gamble, et al.

Cone · No. 1:24-cv-00799-KES-BAM (PC) · Decided June 4, 2025

OPINION

(PC) Cone v. Lopez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CHRIS MONROE CONE, Case No. 1:24-cv-00799-KES-BAM (PC) 12 Plaintiff, ORDER
SEVERING MISJOINED CLAIM

AND DEFENDANT

13 v.

ORDER DIRECTING CLERK OF COURT TO

14 GAMBLE, et al., OPEN NEW ACTION 15 Defendants. ORDER DIRECTING PLAINTIFF
TO

SUBMIT FILING FEE OR APPLICATION TO

16 PROCEED IN FORMA PAUPERIS FOR NEW

ACTION

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THIRTY (30) DAY DEADLINE

18 19 Plaintiff Chris Monroe Cone (“Plaintiff”) is a state prisoner proceeding pro se and in 20
forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. 21 On October 2, 2024, the
undersigned screened Plaintiff’s second amended complaint and 22 issued findings and
recommendations that Plaintiff stated a cognizable claim against Defendant 23 Gamble, a
correctional officer at Valley State Prison, for excessive force in violation of the 24 Eighth
Amendment for the incident on April 29, 2024, and that all other claims and defendants be 25
dismissed based on Plaintiff’s failure to state claims upon which relief may be granted. (ECF No.
26 21.) Plaintiff timely filed objections to the findings and recommendations. (ECF No. 24, 25.)
27 On June 2, 2025, the assigned District Judge issued an order adopting the findings and 28
recommendations in part, finding that Plaintiff had exhausted his administrative remedies as to 1
his claim against Defendant Lopez for the incident on August 28, 2024, before filing the operative
2 second amended complaint. (ECF No. 29.) Accordingly, the District Judge ordered that this 3
action proceed on Plaintiff’s second amended complaint as to: (1) Plaintiff’s claim against 4

Defendant Gamble III for excessive force in violation of the Eighth Amendment for the incident 5 on April 29, 2024, and (2) Plaintiff's claim against Defendant Lopez for excessive force in 6 violation of the Eighth Amendment for the incident on August 28, 2024. (Id.) The District Judge 7 further ordered that all other claims and defendants are dismissed based on Plaintiff's failure to 8 state claims upon which relief may be granted. (Id.) 9 As the District Judge did not address the issue of joinder of Plaintiff's claims, the 10 undersigned will do so below. 11 In the second amended complaint, Plaintiff alleges that on April 29, 2024, at Valley State 12 Prison ("VSP"), Defendant Gamble III punched Plaintiff in the face and body slammed Plaintiff 13 to the ground as Plaintiff was handcuffed. (ECF No. 19, p. 2.) Plaintiff then alleges that on 14 August 28, 2024, at Corcoran State Prison ("CSP"), Defendant Lopez used excessive force 15 against Plaintiff. (Id. at 5.) Plaintiff argues that both cases are related and similar because of 16 color of law and part of a chain reaction, because had Defendant Gamble not assaulted Plaintiff at 17 VSP, Plaintiff would not be on a Level 4 yard being assaulted by Defendant Lopez at CSP and in 18 danger of higher security threats. (Id.) 19 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 20 R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 21 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so 22 long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and 23 occurrences, and (2) there are commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); 24 Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997). The "same transaction" requirement 25 refers to similarity in the factual background of a claim. Id. at 1349. Only if the defendants are 26 properly joined under Rule 20(a) will the Court review the other claims to determine if they may 27 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party. 28 /// 1 Plaintiff may not raise different claims against different defendants that are unrelated. 2 The fact that all of Plaintiff's allegations are based on the same type of constitutional violation 3 (i.e. excessive force) does not necessarily make the claims related for purposes of Rule 18(a). 4 Claims are related where they are based on the same precipitating event, or a series of related 5 events caused by the same precipitating event. Plaintiff's argument that the actions of Defendant 6 Gamble led to his assault by Defendant Lopez four months later at a completely separate 7 institution, is not sufficient to demonstrate that these claims are based on the same precipitating 8 event or a series of related events. The Court therefore finds that these claims are not properly 9 joined pursuant to Rule 18, and the claims should be severed pursuant to Rule 21 and proceed in 10 separate actions. 11 Accordingly, IT IS HEREBY ORDERED that: 12 1. This action shall proceed on Plaintiff's second amended complaint, filed September 26, 13 2024, (ECF No. 19), only as to the claim against Defendant Gamble III at Valley State 14 Prison, for excessive force in violation of the Eighth Amendment for the incident on April 15 29, 2024; 16 2. Pursuant to Federal Rule of Civil Procedure 21, the Court severs the misjoined claims into 17 separate cases; 18 3. The Clerk of the Court is directed to assign a separate case number to Plaintiff's claim 19 against Defendant Lopez at Corcoran State

Prison, for excessive force in violation of the 20 Eighth Amendment for the incident on August 28, 2024; 21 4. The Clerk of the Court is directed to issue and serve by mail new case documents to 22 Plaintiff indicating the newly assigned case number and a blank application to proceed in 23 forma pauperis; 24 5. The Clerk of the Court is directed to file a copy of Plaintiff's Second Amended 25 Complaint, (ECF No. 19), and a copy of this order in the newly opened case and shall 26 directly assign the new case to the same District Judge and Magistrate Judge as in the 27 instant action; 28 /// 1 6. As to the new case, within thirty (30) days from the date of service of this order, Plaintiff 2 will be required to file a \$405.00 filing fee or file a motion for leave to proceed in forma 3 pauperis; and 4 7. Plaintiff's failure to comply with this order will result in dismissal of the new case, 5 without prejudice, for failure to prosecute and failure to obey a court order. 6 IT IS SO ORDERED. 7 8 Dated: June 3, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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