

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Kristin Hardy v. A. Silva, John Doe

Hardy v. Silva · No. 3:24-cv-0899-JAH-MSB · Decided April 22, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Kristin Hardy’s First Amended § 1983 complaint without prejudice for failure to state a claim. The court rejected First Amendment and Fourteenth Amendment due process claims arising from the return of educational books sent to a California inmate, denied further leave to amend as futile, certified that an IFP appeal would not be taken in good faith, and directed entry of judgment.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	John A. Houston
JURISDICTION	United States District Court for the Southern District of California
DECIDED	April 22, 2025
DOCKET	3:24-cv-0899-JAH-MSB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se prisoner civil-rights action under 42 U.S.C. § 1983; the court screened the First Amended Complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) and dismissed it sua sponte for failure to state a claim.
STANDARD OF REVIEW	De novo screening under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), applying the Federal Rule of Civil Procedure 12(b)(6) plausibility standard.
PRECEDENTIAL VALUE	Unpublished federal district court order; persuasive, nonprecedential value.
PARTIES	Kristin Hardy v. A. Silva, John Doe

TOPICS

- section 1983
- prisoners rights
- first amendment
- due process
- pleadings

PRACTICE AREAS

prisoner civil rights

constitutional law

civil procedure

federal pleading and screening

remedies

QUESTIONS PRESENTED

1. Whether the isolated return or delay of Hardy's package of educational books, allegedly because of his administrative-segregation status and accompanied by inadequate notice, plausibly stated a First Amendment claim under 42 U.S.C. § 1983.
2. Whether the alleged return or delay of the books without timely notice stated a Fourteenth Amendment due-process claim.
3. Whether further leave to amend should be granted after Hardy failed to cure deficiencies identified in the prior screening order.

HOLDINGS

1. A single, temporary or isolated incident of mail interference, without plausible allegations of an improper motive or a broader course of unconstitutional censorship, does not state a prisoner's First Amendment claim.
2. The alleged negligent or unauthorized return or delay of the books did not state a due-process claim where the complaint did not plausibly allege an intentional deprivation and California provided an adequate post-deprivation remedy.
3. Further leave to amend was properly denied as futile after Hardy had already been informed of his pleading deficiencies and failed to cure them in the First Amended Complaint.

KEY QUOTATIONS

“The standard for determining whether Plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” (at 3)

“Absent evidence of a “broader plan or course of conduct to censor plaintiff’s mail unconstitutionally, an error by prison officials does not justify relief under § 1983.”” (at 4)

“Only if the failure to provide notice was pursuant to prison policy does this constitute a due process violation actionable under § 1983.” (at 5)

FACTUAL BACKGROUND

Hardy, a California prisoner, enrolled in a paralegal correspondence course and was to receive textbooks by mail. After he was transferred to another correctional facility and placed in administrative segregation, a shipment of books was received at the new facility but rejected by receiving-and-release officer Silva and returned to the sender. Hardy alleged that he was not timely notified and that another officer failed to forward the notice as required by prison regulations, but he did not allege that the books were never ultimately received or that the defendants acted pursuant to an unconstitutional policy or improper motive.

PROCEDURAL HISTORY

Hardy was granted in forma pauperis status, and the court dismissed his original complaint without prejudice for failure to state a claim while granting leave to amend. After an extension of time, Hardy filed a First Amended Complaint alleging First Amendment and Fourteenth Amendment violations arising from the return of educational books mailed to him in prison. The court dismissed the First Amended Complaint without further leave to amend, certified that an IFP appeal would not be taken in good faith, and directed entry of final judgment.

DISPOSITION

dismissed

CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012)
- Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995)
- Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999)
- Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990)
- Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999)
- Lingo v. Boone, 402 F. Supp. 768, 773 (C.D. Cal. 1975)
- Canales v. Guzman, 2023 WL 5418771, at *4 (S.D. Cal. 2023)
- Watkins v. Curry, 2011 WL 5079532, at *3 (N.D. Cal. 2011)
- Hudson v. Palmer, 468 U.S. 517, 533 (1984)
- Daniels v. Williams, 474 U.S. 327, 328 (1986)
- Sorrels v. McKee, 290 F.3d 965, 972 (9th Cir. 2002)
- Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994)
- Gonzalez v. Planned Parenthood, 759 F.3d 1112, 1116 (9th Cir. 2014)
- Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981, 1007 (9th Cir. 2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 KRISTIN HARDY, Case No.: 3:24-cv-0899-JAH-MSB CDCR #AA-8633,
12 ORDER DISMISSING FIRST Plaintiff, 13 AMENDED PETITION FOR vs. FAILURE TO
STATE A CLAIM 14 PURSUANT TO 28 U.S.C. §§ 15 1915(e)(2)(B) AND 1915A(b) A. SILVA,

JOHN DOE, 16 Defendants. 17 18 19 20 21 BACKGROUND 22 Kristin Hardy (“Hardy” or “Plaintiff”) is an inmate proceeding pro se with a civil 23 action pursuant to 42 U.S.C. § 1983.

On November 11, 2024, the Court granted Hardy’s 24 request to proceed in forma pauperis (“IFP”) but dismissed his original complaint without 25 prejudice for failure to state a claim. ECF No. 6. The Court granted Plaintiff leave to amend 26 and, after an extension of time, Hardy has now filed a First Amended Complaint (“FAC”). 27 See ECF Nos. 6, 9, 10.

In his FAC, Hardy alleges his constitutional rights were violated 28 when a parcel containing educational books Hardy had ordered by mail was improperly 1 returned to the sender. See ECF No. 10. For the reasons discussed below, the Court 2 dismisses the FAC without prejudice for failure to state a claim. 3 SCREENING PURSUANT TO 28 U.S.C. § 1915(e) AND § 1915A(b) 4 A. Legal Standards 5 Because Plaintiff is proceeding IFP, the Court must screen the FAC and sua sponte 6 dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), to the extent it is 7 frivolous, malicious, fails to state a claim, or seeks damages from defendants who are 8 immune.

See *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes v. 9 Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether 10 Plaintiff has failed to state a claim upon which relief can be granted under § 11 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for 12 failure to state a claim.” *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir.

2012). Rule 13 12(b)(6) requires that a complaint to “contain sufficient factual matter... to state a claim 14 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal 15 quotation marks omitted). While detailed factual allegations are not required, “[t]hreadbare 16 recitals of the elements of a cause of action, supported by mere conclusory statements, do 17 not suffice” to state a claim.

Id. The “mere possibility of misconduct” or “unadorned, the 18 defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility 19 standard. *Id.* 20 “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right 21 secured by the Constitution and laws of the United States, and (2) that the deprivation was 22 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 23 F.3d 1128, 1138 (9th Cir.

2012). 24 B. Plaintiff’s Allegations 25 Hardy alleges that in February of 2022, he enrolled in paralegal correspondence 26 course provided by “Blackstone.” ECF No. 10 at 8. He paid a tuition fee of \$825.00 and 27 was to receive books from Blackstone “in shipments of three[,] whenever an exam was 28 completed.” *Id.* 1 On March 10, 2023, while Hardy was an inmate at High Desert State Prison, he 2 completed an exam.

Id. Plaintiff was then transferred to Donovan Correctional Facility 3 (“RJD”) on March 13, 2023. *Id.* After Blackstone initially shipped Plaintiff’s next round 4 of textbooks to High Desert State

Prison, Hardy “received notice” that the books were 5 being “reshipped” to RJD. Id. But Hardy subsequently learned the books were “received” 6 at RJD on April 27, 2023, while Hardy was confined to administrative segregation.

Id. 7 Silva, an RJD “receiving and release” officer, “rejected” the books and had them shipped 8 back to Blackstone. Id. 9 California Department of Corrections and Rehabilitation (“CDCR”) regulations 10 require that an inmate be provided “notice” when mail is rejected, but Silva did not provide 11 such a notice to Plaintiff. Id. at 9. Hardy further alleges Silva should have been aware that 12 inmates are permitted to have correspondence course books, even when confined to 13 administrative segregation.

Id. 14 In late May of 2023, spoke to “Doe,” another officer in “receiving and release,” who 15 provided Hardy with a “notice of disapproved books” indicating the books had been 16 returned to sender on May 1, 2023. Id. at 9–10.

The notice was not forwarded to a facility 17 captain as required under CDCR regulations. Id. at 10. 18 C. Discussion 19 Hardy alleges Defendants Silva and Doe violated his First Amendment and Due 20 Process rights when they deprived him of the shipment of books. Id. at 10–11. He seeks 21 compensatory and punitive damages. Id. at 11. 22 1.

First Amendment 23 Hardy alleges Silva and Doe violated his First Amendment rights by returning his 24 package to the sender “due to [his] ad-seg status,” despite regulations permitting Hardy to 25 have books. ECF No. 10 at 9.

As discussed in this Court’s previous screening order, 26 prisoners have “a First Amendment right to send and receive mail.” *Witherow v. Paff*, 52 27 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, a temporary delay or isolated incident 28 of delay or other mail interference without evidence of improper motive does not violate a 1 prisoner’s First Amendment rights.

See *Crofton v. Roe*, 170 F.3d 957, 961 (9th Cir. 1999) 2 (temporary delay in the delivery of publications did not violate inmate’s First Amendment 3 rights); accord *Smith v. Maschner*, 899 F.2d 940, 944 (10th Cir. 1990) (isolated incidents 4 of mail interference without evidence of improper motive do not give rise to a 5 constitutional violation); *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir.

1999) (content- 6 neutral, short-term, and sporadic delays in prisoner’s receipt of mail did not violate his First 7 Amendment rights). 8 Here, Hardy raises a single incident of delayed mail.¹ He appears to allege an 9 “improper motive” can be inferred from Silva’s failure to follow CDCR regulations 10 regarding timely notification, but without more, this amounts to only negligence.

The Court 11 also notes that Hardy admits he received notification that the books had been shipped back 12 to the sender at the end of May, less than 30 days after the parcel was returned.

See ECF 13 No. 10 at 9. Absent evidence of a “broader plan or course of conduct to censor plaintiff’s 14 mail unconstitutionally, an error by prison officials does not justify relief under § 1983.” 15 See *Lingo v. Boone*, 402 F. Supp. 768, 773 (C.D.

Cal. 1975) (finding prisoner not entitled 16 to monetary relief under § 1983 where prison officials erroneously withheld a single piece 17 of mail on the grounds that it was inflammatory); *Canales v. Guzman*, 2023 WL 5418771, 18 at *4 (S.D. Cal. 2023) (finding allegation of a single incident of negligence in failing to 19 deliver the plaintiff’s package insufficient to state a First Amendment claim);” *Watkins v. 20 Curry*, 2011 WL 5079532, at *3 (N.D.

Cal. 2011) (“[A]n honest error by prison officials 21 [in delivering mail] does not justify relief under § 1983”). Therefore, Hardy has failed to 22 state a First Amendment claim. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *Iqbal*, 556 U.S. 23 at 678. 24 2. Due Process 25 Hardy alleges Defendants violated his right to due process by having his books 26 27 1 Hardy does not allege that he never received the books.

See generally, ECF No. 10; see also ECF No. 1 28 1 returned to sender without giving him sufficient notice. ECF No. 1 at 2–3. The Due Process 2 Clause of the Fourteenth Amendment protects individuals from state deprivations of life, 3 liberty, or property without due process of law. With respect to a prisoner’s property, the 4 Supreme Court has held that “an unauthorized intentional deprivation of property” by a 5 prison official constitutes a violation of due process if a meaningful post-deprivation 6 remedy for the loss is unavailable.

Hudson v. Palmer, 468 U.S. 517, 533 (1984). If, 7 however, a prison official merely acts negligently in losing a prisoner’s property, there is 8 no due process violation. *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (“[T]he Due 9 Process Clause is simply not implicated by a negligent act of an official causing unintended 10 loss of or injury to life, liberty, or property.”) (emphasis in the original).

11 Here, Hardy’s claim that his package of books was improperly returned to the vendor 12 fails to give rise to a cognizable due process claim. As discussed above, Hardy’s allegations 13 are insufficient to plausibly allege an “unauthorized intentional” deprivation. See *id.* 14 Furthermore, Hardy does not allege he never received his books. And a mere delay of an 15 inmate’s mail without notice to the inmate is not a violation of the Fourteenth Amendment.

16 *Sorrels v. McKee*, 290 F.3d 965, 972 (9th Cir. 2002) (“Only if the failure to provide notice 17 was pursuant to prison policy does this constitute a due process violation actionable under 18 § 1983.”). 19 Finally, even if Hardy were permanently deprived of the books, he has an adequate 20 post-deprivation remedy under California law and therefore, he may not pursue a due 21 process claim arising out of the unlawful confiscation of his personal property.

Barnett v. 22 Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–895).
23 Accordingly, Hardy has failed to state a due process claim. See 28 U.S.C. §§ 1915(e)(2)(B), 24
1915A(b); Iqbal, 556 U.S. at 678. 25 D. Amendment Would Be Futile 26 The Court previously
provided Hardy with a short and plain statement of his 27 pleading deficiencies, and an
opportunity to amend his claims, to no avail.

As such, the 28 Court finds granting further leave to amend would be futile. See Gonzalez v.
Planned 1 || Parenthood, 759, F.3d 1112, 1116 (9th Cir. 2014) (‘Futility of amendment can, by
itself, 2 ||justify the denial of... leave to amend.’”); Zucco Partners, LLC v. Digimarc Corp., 552 3
|| F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has previously been granted leave 4 ||to
amend and has subsequently failed to add the requisite particularity to its claims, [t]he 5 || district
court’s discretion to deny leave to amend is particularly broad.” (internal quotation 6 ||marks
omitted)).

Thus, the FAC is dismissed without further leave to amend. 7 CONCLUSION AND ORDER 8 For
above reasons, the Court DISMISSES this civil action sua sponte without 9 || further leave to
amend for failure to state a claim upon which § 1983 relief can be granted, 10 || pursuant to 28
U.S.C. §§ 1915(e)(2)(B) and 1915A(b). 11 The Court further CERTIFIES that an IFP appeal
would not be taken in good faith 12 pursuant to 28 U.S.C. § 1915(a)(3) and DIRECTS the Clerk of
Court to enter a final 13 || judgment of dismissal and close the file.

14 IT IS SO ORDERED. 15 Dated: April 22, 2025 16 on. John A. Houston 7 // United States
District Judge 18 19 20 21 22 23 24 25 26 27 28