

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Antione L. Harris v. Brett Hommes

No. 25-cv-1567-bhl, United States District Court for the Eastern District of Wisconsin (December 4, 2025)

SUMMARY

The United States District Court for the Eastern District of Wisconsin screened Antione L. Harris’s amended 42 U.S.C. § 1983 complaint alleging that a correctional officer made a racially derogatory comment. The court held that the alleged verbal harassment did not state a constitutional claim, dismissed the action for failure to state a claim, and ordered that Harris receive a strike under 28 U.S.C. § 1915(g).

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	Brett H. Ludwig
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	December 4, 2025
DOCKET	25-cv-1567-bhl
DISPOSITION	dismissed
PROCEDURAL POSTURE	Screening of a pro se prisoner's amended 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	The court screened the amended prisoner complaint under 28 U.S.C. § 1915A, determining whether it complied with the Federal Rules of Civil Procedure and stated at least a plausible claim for relief; dismissal was required for failure to state a claim.
PRECEDENTIAL VALUE	unknown
PARTIES	Antione L. Harris v. Brett Hommes

TOPICS

- prisoners rights
- section 1983
- cruel and unusual punishment
- civil rights
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an officer's alleged racially derogatory verbal comment to a prisoner states a claim for cruel and unusual punishment or another constitutional violation under 42 U.S.C. § 1983.
2. Whether the amended complaint should be dismissed during screening for failure to state a claim under 28 U.S.C. § 1915A.

HOLDINGS

1. A racially derogatory verbal comment, standing alone, does not rise to the level of cruel and unusual punishment and does not state a constitutional claim under § 1983.
2. The amended complaint was subject to dismissal under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) because it failed to state a claim.

KEY QUOTATIONS

“Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest, or deny a prisoner equal protection of the laws.” (at 2)

“Harris’ allegation that Hommes directed a racially derogatory statement at him therefore fails to state a claim upon which relief can be granted.” (at 2)

FACTUAL BACKGROUND

On August 21, 2025, while Harris was receiving medication at the Racine Correctional Institution, Officer Hommes allegedly asked whether Harris had seen the movie Planet of the Apes. Hommes allegedly said that Harris looked like the white gorilla in the movie and laughed. Harris, who is African American, alleged that the comment was demeaning and offensive.

PROCEDURAL HISTORY

Harris filed an original complaint alleging that prison officer Brett Hommes made a racially derogatory comment. The court previously screened the original complaint, found that it failed to state a claim, and allowed Harris to amend. After reviewing the amended complaint, which repeated the original allegations, the court dismissed the action for failure to state a claim and directed entry of judgment and a strike under 28 U.S.C. § 1915(g).

DISPOSITION

dismissed

CASES CITED

- DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000)

- *Dobbey v. Illinois Department of Corrections*, 574 F.3d 443, 445 (7th Cir. 2009)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN ANTIONE L. HARRIS, Plaintiff, v. Case No. 25-cv-1567-bhl BRETT HOMMES, Defendant. SCREENING ORDER Plaintiff Antione Harris, who is currently serving a state prison sentence at the Racine Correctional Institution and representing himself, filed a complaint under 42 U.S.C. §1983, alleging that his civil rights were violated.

On November 18, 2025, the Court screened the complaint and, after concluding it failed to state a claim upon which relief could be granted, gave Harris the opportunity to file an amended complaint, which he did on December 1, 2025. Dkt. No. 12. This matter is before the Court to screen the amended complaint, as required by 28 U.S.C. §1915A. SCREENING OF THE AMENDED COMPLAINT The Court has a duty to review any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity and must dismiss any complaint or portion thereof if the prisoner has raised any 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). In screening a complaint, the Court must determine whether the complaint complies with the Federal Rules of Civil Procedure and states at least plausible claims for which relief may be granted. To state a cognizable claim under the federal notice pleading system, a plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief.” Fed.

R. Civ. P. 8(a)(2). It must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused. ALLEGATIONS OF THE AMENDED COMPLAINT The allegations in the amended complaint are substantively identical to the allegations in the original complaint.

According to Harris, on August 21, 2025, he was getting his medication when Officer Brett Hommes asked him if he had ever seen the movie Planet of the Apes. Hommes allegedly stated that Harris looked like the white gorilla in the movie and started laughing. Harris is African American, and his grandmother was a slave. He explains that Hommes’ comment was demeaning and offensive.

THE COURT’S ANALYSIS As the Court explained in the original screening order, racially derogatory comments such as the one Hommes allegedly made to Harris are deplorable and perhaps deserving of internal discipline, but, as the Seventh Circuit has explained, they do not rise to the level of cruel and unusual punishment and therefore do not violate the Constitution.

DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000) (“Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest, or deny a prisoner equal protection of the laws.”); Dobbey v. Ill. Dep’t of Corr., 574 F.3d 443, 445 (7th Cir. 2009) (holding that hanging a noose in front of an African American prisoner constituted racial harassment, not cruel and unusual punishment and therefore failed to state a claim under the Eighth Amendment).

Harris’ allegation that Hommes directed a racially derogatory statement at him therefore fails to state a claim upon which relief can be granted. IT IS THEREFORE ORDERED that this action is DISMISSED pursuant to 28 U.S.C. §§1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim. IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has incurred a “strike” under 28 U.S.C. §1915(g).

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly. Dated at Milwaukee, Wisconsin on December 4, 2025. s/ Brett H. Ludwig BRETT H. LUDWIG United States District Judge This order and the judgment to follow are final. Plaintiff may appeal this Court’s decision to the Court of Appeals for the Seventh Circuit by filing in this Court a notice of appeal within 30 days of the entry of judgment.

See Fed. R. App. P. 3, 4. This Court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. See Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, he will be liable for the \$605.00 appellate filing fee regardless of the appeal’s outcome. If Plaintiff seeks leave to proceed in forma pauperis on appeal, he must file a motion for leave to proceed in forma pauperis with this Court.

See Fed. R. App. P. 24(a)(1). Plaintiff may be assessed another “strike” by the Court of Appeals if his appeal is found to be non- meritorious. See 28 U.S.C. §1915(g). If Plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury.

Id. Under certain circumstances, a party may ask this Court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within 28 days of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment.

The Court cannot extend these deadlines. See Fed. R. Civ. P. 6(b)(2). A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.

