

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jarvon D. Green v. Gomez, et al.

Green v. Gomez · No. 2:22-cv-0719 CKD P · Decided March 7, 2023

SUMMARY

The United States District Court for the Eastern District of California dismissed Jarvon D. Green's amended § 1983 complaint for failure to state a claim. The court discussed potential claims involving failure to protect, retaliation, prison disciplinary proceedings, and parole denial, and explained the applicable pleading and habeas requirements. The court granted plaintiff thirty days to file a second amended complaint.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JARVON D. GREEN, No. 2:22-cv-0719 CKD P 12 Plaintiff, 13 v. ORDER
14 GOMEZ, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se and seeking
relief pursuant to 42 U.S.C. § 18 1983.

On August 19, 2022, plaintiff's complaint was dismissed with leave to file an amended 19
complaint. Plaintiff has now filed an amended complaint. 20 The court is required to screen
complaints brought by prisoners seeking relief against a 21 governmental entity or officer or
employee of a governmental entity. 28 U.S.C. § 1915A(a).

The 22 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
legally 23 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
that seek 24 monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
1915A(b)(1),(2). 25 The court has reviewed plaintiff's amended complaint and finds that it fails to
state a 26 claim upon which relief can be granted under federal law.

Plaintiff's amended complaint must be 27 dismissed. The court will, however, grant leave to file a
second amended complaint. 28 // 1 If plaintiff chooses to amend, plaintiff must submit a second
amended complaint that is 2 legible. Some key parts of plaintiff's amended complaint are
impossible to decipher. Also, 3 plaintiff's amended complaint is mostly vague and conclusory.

In terms of stating a claim upon 4 which relief can be granted, plaintiff must identify specific
actions taken by a particular defendant 5 that led to a discernable injury suffered by him. As
plaintiff has already been informed, plaintiff 6 must allege in specific terms how each named

defendant is involved. There can be no liability 7 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's 8 actions and the claimed deprivation.

Rizzo v. Goode, 423 U.S. 362 (1976). 9 Plaintiff alleges that defendants are responsible for him being attacked by other inmates. 10 Under the Eighth Amendment, "prison officials have a duty to protect prisoners from violence at 11 the hands of other prisoners." Farmer v. Brennan, 511 U.S. 825, 833 (1994) (internal quotation 12 marks, ellipsis, and citation omitted).

However, "not... every injury suffered by one prisoner at 13 the hands of another... translates into constitutional liability for prison officials responsible for 14 the victim's safety." Id. at 834. A prison official may be held liable for an assault suffered by 15 one inmate at the hands of another only when the assaulted inmate can show that the injury is 16 sufficiently serious, and that the prison official was deliberately indifferent to the risk of harm.

17 Id. at 834, 837. Thus, the relevant inquiry is whether prison officials, "acting with deliberate 18 indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to his future 19 health." Id. at 834 (internal quotation omitted).

To be deliberately indifferent, the "official must 20 both be aware of facts from which the inference could be drawn that a substantial risk of serious 21 harm exists, and he must also draw the inference." Id. 22 Plaintiff also asserts that defendants retaliated against him for plaintiff's use of the inmate 23 grievance procedure.

In order to state a claim for retaliation, plaintiff must point to facts 24 indicating a causal connection between the adverse action and the protected conduct. Watison v. 25 Carter, 668 F.3d 1108, 1114 (9th Cir. 2012). Plaintiff cannot simply assert he utilized the 26 grievance process and then something adverse happened to him. 27 Further, plaintiff asserts that he was improperly found guilty at prisoner disciplinary 28 proceedings.

Any challenge to prisoner disciplinary proceedings which resulted in the revocation 1 of good conduct sentence credit must be brought in a petition for writ of habeas corpus and not a 2 42 U.S.C. § 1983 action unless the revoked sentence credit has been restored. See Edwards v. 3 Balisok, 520 U.S. 641, 646-47 (1996).

In order to state a cognizable claim for violation of due 4 process during prisoner disciplinary proceeding which did not result in the revocation of good 5 conduct sentence credit, plaintiff must allege facts which suggest that he was deprived of a 6 protected liberty interest. Such liberty interests are "generally limited to freedom from restraint 7 which, while not exceeding the sentence in such an unexpected manner as to give rise to 8 protection by the Due Process Clause of its own force, [citations omitted], nonetheless imposes 9 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 10 Sandin v. Connor, 515 U.S. 472, 484 (1995).

11 While it is not clear, it appears that plaintiff also challenges the denial of parole. When a 12 state prisoner challenges the legality of his custody, and the relief he seeks is the determination of 13 his entitlement to an earlier or immediate release, his sole federal remedy is a writ of habeas 14 corpus which plaintiff would seek under 28 U.S.C. § 2254.

Preiser v. Rodriguez, 411 U.S. 475, 15 500 (1973). Also, to the extent plaintiff seeks damages for having been denied parole, plaintiff is 16 informed he cannot proceed on a § 1983 claim for damages if the claim implies the invalidity of 17 his conviction or sentence. Heck v. Humphrey, 512 U.S. 477, 487 (1994). 18 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 19 make plaintiff's second amended complaint complete.

Local Rule 220 requires that an amended 20 complaint be complete in itself without reference to any prior pleading. 21 In accordance with the above, IT IS HEREBY ORDERED that: 22 1. Plaintiff's amended complaint is dismissed. 23 2. Plaintiff is granted thirty days from the date of service of this order to file a second 24 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules 25 of Civil Procedure, and the Local Rules of Practice.

The second amended complaint must bear 26 ///// 27 ///// 28 ///// 1 | the docket number assigned this case and must be labeled "Second Amended Complaint." Failure 2 || to file a second amended complaint in accordance with this order will result in a recommendation 3 || that this action be dismissed. 4 || Dated: March 6, 2023 Card it | i a la la a 5 CAROLYN K DELANEY?

6 UNITED STATES MAGISTRATE JUDGE 7 8 9 wree0719.14(2) 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28