

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Michael Alan Dean Hill v. Dennis Cemo

Hill v. Cemo · No. 2:25-cv-0789-JDP (P) · Decided December 1, 2025

SUMMARY

The United States District Court for the Eastern District of California dismissed Michael Alan Dean Hill’s amended complaint against Sergeant Dennis Cemo for failure to state a claim. The court concluded that the allegations concerning early-morning awakenings did not sufficiently establish unconstitutional sleep deprivation or First Amendment retaliation. The dismissal was with leave to amend, and the court ordered plaintiff to file an amended complaint or notice of voluntary dismissal within thirty days.

OPINION

Cemo

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 MICHAEL ALAN DEAN HILL, Case No. 2:25-cv-0789-JDP (P) 12 Plaintiff, 13 v.
ORDER

14 DENNIS CEMO,

15 Defendant. 16

17 Plaintiff brings this action against sergeant Dennis Cemo, alleging that Cemo used 18
excessive force against him by waking him up unnecessarily for pill call. The allegations fail to 19
state a claim. Plaintiff may, if he chooses, file an amended complaint that addresses the 20
deficiencies noted herein. 21 Screening and Pleading Requirements 22 A federal court must screen
the complaint of any claimant seeking permission to proceed 23 in forma pauperis. See 28 U.S.C.
§ 1915(e). The court must identify any cognizable claims and 24 dismiss any portion of the
complaint that is frivolous or malicious, fails to state a claim upon 25 which relief may be granted,
or seeks monetary relief from a defendant who is immune from such 26 relief. Id. 27 A complaint
must contain a short and plain statement that plaintiff is entitled to relief, 28 1 Fed. R. Civ. P. 8(a)
(2), and provide “enough facts to state a claim to relief that is plausible on its 2 face,” Bell Atl.
Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 3 require detailed
allegations, but legal conclusions do not suffice. See Ashcroft v. Iqbal, 556 U.S. 4 662, 678
(2009). If the allegations “do not permit the court to infer more than the mere 5 possibility of

misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not 6 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 7 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 8 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 9 n.2 (9th Cir. 2006) (en banc) (citations omitted). 10 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 11 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 12 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 13 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). 14 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements 15 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 16 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 17 Analysis 18 Plaintiff alleges that over a two-week period in February of this year, Cemo directed other 19 correctional officers to wake plaintiff up at 4:30 in morning to move him to a booking cell while 20 officers passed out medication. ECF No. 11 at 3. This routine also occurred in the evenings. *Id.* 21 One evening, sergeant Cameron Pomeroy told plaintiff that plaintiff had not caused any issues 22 with the medication pass, and that officers would not remove him from his cell during medical 23 passes anymore. *Id.* For a few cycles, this was true. Plaintiff received his medications in his 24 cell, without being removed, until one morning when defendant Cemo was back on shift. That 25 morning, plaintiff was awoken early and taken to the law library during medication pass. *Id.* 26 Plaintiff claims that Cemo intentionally harassed him. *Id.* 27 Plaintiff purports to bring claims for harassment, retaliation, and cruel and unusual 28 punishment. Plaintiff has not sufficiently alleged a Fourteenth Amendment claim based on sleep 1 deprivation. Plaintiff alleges that for a few weeks, he was woken up early. The Ninth Circuit has 2 held that illumination of a cell by two large florescence lights that were kept on 24 hours a day for 3 six months did constitute a constitutional violation—but what plaintiff has alleged here, a few 4 hours of light exposure during the early morning, is a far cry from the facts of *Keenan*. See 5 *Keenan v. Hall*, 83 F.3d 1083, 1088, 1090-91 (9th Cir. 1996). 6 As for plaintiff’s retaliation claim, plaintiff has failed to allege a colorable claim. To state 7 a First Amendment retaliation claim, a plaintiff must allege (1) an assertion that a state actor took 8 some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and 9 that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action 10 did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559 11 567-68 (9th Cir. 2005) (citations omitted). Plaintiff alleges in a conclusory fashion that Cemo is 12 retaliating against him, but plaintiff has not explained the factual basis for that allegation. 13 Accordingly, plaintiff’s complaint is dismissed for failure to state a claim. I will allow 14 plaintiff a chance to amend his complaint before recommending that this action be dismissed. 15 Plaintiff should take care to add specific factual allegations against each defendant. If plaintiff 16 decides to file an amended complaint, the amended complaint will supersede the current one. See 17

Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face without reference to the prior pleading. See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current one no longer serves any function. Therefore, in an amended complaint, as in the original, plaintiff will need to assert each claim and allege each defendant's involvement in sufficient detail. The amended complaint should be titled "Second Amended Complaint" and refer to the appropriate case number. If plaintiff does not file an amended complaint, I will recommend that this action be dismissed. Accordingly, it is hereby ORDERED that: 1. Plaintiff's amended complaint, ECF No. 11, is DISMISSED with leave to amend. 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended complaint or (2) notice of voluntary dismissal of this action without prejudice. 3. Failure to timely file either an amended complaint or notice of voluntary dismissal may result in the imposition of sanctions, including a recommendation that this action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 4. The Clerk of Court shall send plaintiff a complaint form with this order. 5 IT IS SO ORDERED. Dated: _ December 1, 2025 Q_____. 8 awe D. PE i ERSON
9 UNITED STATES MAGISTRATE JUDGE
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28