

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Wherry v. Lynch

Wherry · No. 2:25-cv-0429 CKD P · Decided February 27, 2025

SUMMARY

The United States District Court for the Eastern District of California grants Gregory Wherry leave to proceed in forma pauperis but dismisses his 42 U.S.C. § 1983 complaint for failure to state a claim. The court identifies vague allegations, insufficient connections between defendants and alleged constitutional deprivations, and improper joinder concerns. Plaintiff is granted thirty days to file a complete amended complaint, with failure to do so potentially resulting in a recommendation of dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 27, 2025
DOCKET	2:25-cv-0429 CKD P
DISPOSITION	dismissed
PROCEDURAL POSTURE	A state prisoner proceeding pro se under 42 U.S.C. § 1983 sought leave to proceed in forma pauperis. The court screened the complaint under 28 U.S.C. § 1915A and dismissed it for failure to state a claim, granting leave to amend.
STANDARD OF REVIEW	Mandatory screening under 28 U.S.C. § 1915A; the complaint must be dismissed if it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from an immune defendant.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value.
PARTIES	Gregory Wherry v. Jeff Lynch, et al.

TOPICS

- prisoners rights
- section 1983
- pleadings
- civil procedure
- motions to dismiss

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

QUESTIONS PRESENTED

1. Whether the prisoner complaint stated a claim for relief under 42 U.S.C. § 1983 sufficient to survive screening under 28 U.S.C. § 1915A.
2. Whether plaintiff's vague allegations adequately identified each defendant's involvement in an alleged constitutional deprivation.
3. Whether the complaint complied with Federal Rule of Civil Procedure 20's limitations on joining unrelated claims against different defendants.
4. Whether plaintiff was entitled to proceed in forma pauperis.

HOLDINGS

1. Plaintiff's request to proceed in forma pauperis was granted because his declaration made the showing required by 28 U.S.C. § 1915(a).
2. The complaint failed to state a claim upon which relief could be granted and was dismissed, with leave to amend.
3. A § 1983 complaint must allege specific facts showing an affirmative link or connection between each defendant's actions and the claimed constitutional deprivation; vague and conclusory allegations of official participation are insufficient.
4. Under Federal Rule of Civil Procedure 20, plaintiff may not bring unrelated claims against different defendants in the same action.
5. An amended complaint must be complete in itself and may not rely on or incorporate the prior pleading by reference.

KEY QUOTATIONS

"There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation." (at 2)

"Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading." (at 2)

FACTUAL BACKGROUND

Gregory Wherry, a state prisoner, filed a pro se action seeking relief under 42 U.S.C. § 1983 and alleged various injuries and conditions. The court found that the allegations were largely vague and did not identify facts connecting any defendant to a deprivation of constitutional rights. The court also found that the pleading did not comply with federal joinder requirements and advised that any amended complaint must be complete in itself.

PROCEDURAL HISTORY

Plaintiff filed a prisoner civil-rights complaint and a request to proceed in forma pauperis. The court granted in forma pauperis status, screened the complaint, found that the allegations were vague and failed to connect the defendants to a constitutional deprivation, dismissed the complaint, and granted thirty days to file an amended complaint.

DISPOSITION

dismissed

CASES CITED

- Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980)
- Rizzo v. Goode, 423 U.S. 362 (1976)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 GREGORY WHERRY, No. 2:25-cv-0429 CKD P 12 Plaintiff, 13 v. ORDER
14 JEFF LYNCH, 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. This proceeding was referred to this court by Local
Rule 302 pursuant to 28 U.S.C. § 19 636(b)(1).

20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a 21 declaration
that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. 22 Plaintiff is
required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 23 1914(a), 1915(b)
(1). By separate order, the court will direct the appropriate agency to collect the 24 initial partial
filing fee from plaintiff's trust account and forward it to the Clerk of the Court.

25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding
26 month's income credited to plaintiff's prison trust account. These payments will be forwarded
by 27 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a 2
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 3
court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b)(1),(2). 6 The court has reviewed plaintiff's complaint and finds that it fails
to state a claim upon 7 which relief can be granted under federal law. Plaintiff's complaint must be

dismissed. The court will, however, grant leave to file an amended complaint. The primary problem with the allegations in plaintiff's complaint is that they are mostly vague.

Plaintiff alleges various injuries but fails to connect them to a basis for liability against any defendant. If plaintiff chooses to amend the complaint, plaintiff must point to specific facts demonstrating how the conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir.

1980). Also, in his amended complaint, plaintiff must allege in specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient.

Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Also, plaintiff is informed that under Rule 20 of the Federal Rules of Civil Procedure, plaintiff cannot bring unrelated claims against different defendants. Simply put, plaintiff cannot join claims against defendant B that have nothing to do with those brought against defendant A. Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete.

Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. In accordance with the above, IT IS HEREBY ORDERED that: 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED. 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's complaint is dismissed. 4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

The amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed. Dated: February 27, 2025 / s/ Carolyn K. Delaney, United States Magistrate Judge.