

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Blackwell v. Tsui

No. 2:21-cv-2207 KJM AC P (E.D. Cal. Mar. 3, 2023) · No. No. 2:21-cv-2207 KJM AC P · Decided March 6,
2023

SUMMARY

The United States District Court for the Eastern District of California screened Bradley Blackwell’s First Amended Complaint under 28 U.S.C. § 1915A. The court found cognizable First Amendment retaliation claims against David Tsui, James Brown, and E. Baskerville, and a Fourteenth Amendment equal protection claim against Tsui and Brown, while finding other claims insufficiently pleaded. The court allowed plaintiff either to proceed on the surviving claims or file a second amended complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 6, 2023
DOCKET	No. 2:21-cv-2207 KJM AC P
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a state prisoner's First Amended Complaint under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss a prisoner's complaint or portion thereof that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. Failure to state a claim is evaluated under the familiar Federal Rule of Civil Procedure 12(b)(6) standard, requiring sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court screening order; persuasive only
PARTIES	Bradley Blackwell v. David Tsui, James Brown, Brian Holmes, E. Baskerville

TOPICS

section 1983

prisoners rights

first amendment

equal protection

pleadings

PRACTICE AREAS

civil rights

constitutional law

prisoner litigation

civil procedure

QUESTIONS PRESENTED

1. Whether the First Amended Complaint plausibly stated First Amendment retaliation claims against the prison officials.
2. Whether the complaint plausibly stated a Fourteenth Amendment equal protection claim based on alleged discriminatory treatment of gay, non-binary, and transgender inmates.
3. Whether the complaint stated a Fourteenth Amendment due process claim based on harassment, discrimination, stereotyping, or the handling of prison grievances.
4. Whether the plaintiff should be permitted to proceed on cognizable claims or amend the complaint.

HOLDINGS

1. The complaint adequately alleged First Amendment retaliation claims against Tsui and Baskerville for retaliation related to the filing of grievances and against Tsui and Brown for retaliation related to Blackwell's Inmate Advisory Council advocacy.
2. The complaint did not state a First Amendment retaliation claim against Chief Deputy Warden Holmes because the allegations were too conclusory to suggest that Holmes's actions were related to Blackwell's protected conduct.
3. The complaint stated a cognizable equal protection claim against Tsui and Brown based on allegations that they treated straight and cisgender inmates preferentially compared with gay, non-binary, and transgender inmates.
4. The complaint did not state an equal protection claim against Baskerville because it did not specify the nature of the alleged derogatory names or otherwise show that Baskerville acted because of Blackwell's protected status.
5. The complaint did not state a due process claim based on alleged harassment, discrimination, or stereotyping, nor based on the denial or handling of inmate grievances.

KEY QUOTATIONS

“To state a claim under 42 U.S.C. § 1983 for retaliation, the prisoner plaintiff must establish the following: (1) prison officials took adverse action against the inmate; (2) the adverse action was taken because the inmate engaged in protected conduct; (3) the adverse action chilled the inmate’s First Amendment rights; and (4) the adverse action did not serve a legitimate penological purpose.” (p. 3)

“Thus, the denial, rejection, screening out of issues, review, or cancellation of a grievance does not constitute a due process violation.” (p. 6)

FACTUAL BACKGROUND

Blackwell, a non-binary state prisoner and member of the Mule Creek State Prison Inmate Advisory Council, alleged that correctional officers Tsui and Brown made disparaging remarks about LGBTQ people and retaliated against his advocacy. He alleged that Tsui and Brown improperly distributed some of his and his cellmate's property, after which he filed grievances concerning property theft, discrimination, and staff misconduct. He further alleged that Tsui issued a rules-violation report after the first grievance and that Sergeant Baskerville threatened and verbally harassed him after he filed a second grievance, while Chief Deputy Warden Holmes denied or processed his grievances inadequately.

PROCEDURAL HISTORY

Blackwell, a state prisoner proceeding pro se and in forma pauperis, filed a First Amended Complaint before the court screened his original complaint. The court found cognizable First Amendment retaliation claims against Tsui, Brown, and Baskerville and a Fourteenth Amendment equal protection claim against Tsui and Brown. It found the remaining claims deficient but granted Blackwell the option either to proceed on the cognizable claims or file a second amended complaint.

DISPOSITION

other

CASES CITED

- *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)
- *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984)
- *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989)
- *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Conley v. Gibson*, 355 U.S. 41, 47 (1957)
- *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Hospital Building Co. v. Trustees of the Rex Hospital*, 425 U.S. 738, 740 (1976)
- *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969)
- *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005)
- *Hartmann v. California Department of Corrections & Rehabilitation*, 707 F.3d 1114, 1123 (9th Cir. 2013)
- *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)
- *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001)
- *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam)
- *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005)
- *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003)
- *Toussaint v. McCarthy*, 801 F.2d 1080, 1089 (9th Cir. 1986)
- *Sandin v. Conner*, 515 U.S. 472 (1995)

- *Tellis v. Godinez*, 5 F.3d 1314, 1316 (9th Cir. 1993)
- *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)
- *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)
- *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996)
- *Evans v. Skolnik*, 637 F. App'x 285, 288 (9th Cir. 2015)
- *Wright v. Shannon*, No. 1:05-cv-01485-LJO-YNP PC, 2010 WL 445203, at *5 (E.D. Cal. Feb. 2, 2010)
- *Towner v. Knowles*, No. CIV S-08-2823 LKK EFB P, 2009 WL 4281999, at *2 (E.D. Cal. Nov. 20, 2009)
- *Williams v. Cate*, No. 1:09-CV-00568-OWW-YNP PC, 2009 WL 3789597, at *6 (E.D. Cal. Nov. 10, 2009)
- *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993)
- *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)
- *Arnold v. International Business Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)
- *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)
- *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012)
- *Valandingham v. Bojorquez*, 866 F.2d 1135, 1139 (9th Cir. 1989)