

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Rutherford v. Steadman

Rutherford · No. 3:24-cv-01627-JAH-JLB · Decided May 21, 2025

OPINION

Rutherford v. Steadman

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 NICHOLAS JOVON RUTHERFORD, Case No. 3:24-cv-01627-JAH-JLB

CDCR #BE-6676,

12

ORDER DISMISSING CIVIL

Plaintiff,

13 ACTION FOR FAILING TO STATE

vs. A CLAIM PURSUANT

14

TO 28 U.S.C. § 1915(e)(2) AND

S. STEADMAN, Warden; P. WINGO,

15 § 1915A(b)(1) AND FOR FAILING

ISU Officer; B. GOMEZ, C/O;

TO PROSECUTE IN COMPLIANCE

16 C. CHADRY, C/O; ESPENO,

WITH COURT ORDER

17 Defendants. REQUIRING AMENDMENT 18 19 Plaintiff Nicholas Jovon Rutherford, a
prisoner at Salinas Valley State Prison, is 20 proceeding without counsel in this civil rights action
filed pursuant to 42 U.S.C. § 1983. 21 (See “Compl.,” ECF No. 1 at 1.) In his Complaint, Plaintiff
alleged several prison officials 22 at Richard J. Donovan Correctional Facility in San Diego
violated his constitutional rights 23 while he was incarcerated there in October 2022. (Id. at 2–3.)
24 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the 25 time he
filed his Complaint, but instead filed a Motion to Proceed In Forma Pauperis 26 (“IFP”) pursuant
to 28 U.S.C. § 1915(a). (See ECF No. 2.) On February 24, 2025, the 27 Court granted Plaintiff
leave to proceed IFP, but screened and dismissed his Complaint sua 28 sponte for failing to state
claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and 1 1915A(b)C1). (See ECF No. 3.) Plaintiff

was notified of his pleading deficiencies, and 2 || granted 45 days leave in which to file an Amended Complaint that fixed them. (/d. at □□ 3 || 14.) The Court also warned Plaintiff that his failure to amend would result in the dismissal 4 llof his case. (Ud. at 14, citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a 5 || plaintiff does not take advantage of the opportunity to fix his complaint, a district court 6 ||may convert the dismissal of the complaint into a dismissal of the entire action.”’).) 7 Plaintiff’s Amended Complaint was due on or before April 10, 2025, and more than 8 ||a month has passed since. But to date, Plaintiff has failed to amend and has not requested 9 || an extension of time in which to do so. “The failure of the plaintiff eventually to respond 10 ||to the court’s ultimatum—either by amending the complaint or by indicating to the court 11 ||that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.” 12 || *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004). 13 Accordingly, the Court DISMISSES this civil action in its entirety based on 14 || Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant to 28 15 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1), and his failure to prosecute as required by 16 || Court’s February 24, 2025 Order requiring amendment. The Court further CERTIFIES 17 an IFP appeal would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) and 18 || DIRECTS the Clerk to enter a final judgment of dismissal and close the file. 19 IT IS SO ORDERED. 20 || Dated: May 21, 2025 21 Hon. John A. Houston 79 / United States District Judge 23 24 25 26 27 28

2 ALANA NACADT □□□□□□□□