

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 2, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ISMAEL RUIZ,

Plaintiff - Appellant,

v.

WYOMING DEPARTMENT OF
CORRECTIONS DIRECTOR, in his
official capacity, a/k/a Dan Shannon;
WYOMING DEPARTMENT OF
CORRECTIONS HONOR FARM
CAPTAIN, in his official capacity, a/k/a
Ethan Remacle; WYOMING
DEPARTMENT OF CORRECTIONS
HONOR FARM CASE WORKER, in her
official capacity, a/k/a Karla Scott;
WYOMING DEPARTMENT OF
CORRECTIONS HONOR FARM
CORRECTIONS LIEUTENANT, a/k/a
Sarah Countryman; DANIEL SHANNON,
in his individual capacity; ETHAN
REMACLE, in his individual capacity;
KARLA SCOTT, in her individual
capacity; SARAH COUNTRYMAN, in her
individual capacity,

Defendants - Appellees.

No. 23-8021
(D.C. No. 2:23-CV-00013-ABJ)
(D. Wyo.)

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Plaintiff Ismael Ruiz, a state prisoner proceeding pro se, appeals the district court's dismissal of his amended complaint brought under 42 U.S.C. § 1983. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's order dismissing Ruiz's amended complaint for failure to state a claim.

I. BACKGROUND

A. Factual Background

Ruiz was a state prisoner at the Wyoming Honor Farm in Riverton, Wyoming. Ruiz filed the underlying action against the Wyoming Department of Corrections Director (Daniel Shannon), two corrections officers (Ethan Remacle and Sarah Countryman), and a caseworker (Karla Scott) at Wyoming Honor Farm. Ruiz asserts that the defendants retaliated against him in violation of the First Amendment to the United States Constitution.

On August 30, 2022, Ruiz was charged with theft under the Inmate Code of Discipline for taking extra food from the prison kitchen the day prior without authorization. Ruiz then submitted an Inmate Communication Form to Captain Remacle requesting permission to use his assigned computer account to submit an Emergency Inmate Grievance Form in response to the charge, as he was allegedly provided permission from the kitchen supervisors to take extra food. Additionally, he allegedly needed access to the computer to prepare legal documents. However, Ruiz's computer

account was closed, as his “legal file” was in the process of being transferred to another facility. ROA at 223. This transfer was taking place because Ruiz was being relocated from Wyoming Honor Farm to participate in a work release program. It is unclear from the record whether Ruiz actually filed an Emergency Inmate Grievance Form in response to the charge. Nevertheless, the charge was ultimately dismissed, and a verbal warning was issued to Ruiz.

Further, Ruiz alleges Scott, his caseworker, verbally intimidated him during their meetings. Ruiz asserts Scott was “extremely disrespectful” to him and his fiancée when his fiancée contacted Scott requesting information about Ruiz’s acceptance into a particular work release program. *Id.* at 220. In response to these incidents, Ruiz filed grievances with the Wyoming Department of Corrections (WDOC) on November 1, 2022 and November 5, 2022, requesting to be reassigned to a new caseworker.

On November 1, 2022, WDOC staff reported that Ruiz claimed Warden Moffat had organized a police escort and presence for Ruiz’s meeting with Scott that day. However, Warden Moffat had never approved a police escort or presence. This same day, Captain Remacle directly ordered Ruiz to return to his cell and Ruiz complied. Officers then handcuffed Ruiz and placed him in segregation, where he stayed until at least November 7, 2022.

On November 2, 2022, Capitan Remacle charged Ruiz under the Inmate Code of Discipline with making a false statement to a staff member in response to the allegations that arose from the day prior. However, following a disciplinary hearing conducted on

November 4, 2022, Ruiz was acquitted of the charge. It was determined that the accusations were based on a misunderstanding regarding the statements made by Ruiz.

Upon release from segregation, Captain Remacle took Ruiz to the warden's office. While in the warden's office, Warden Moffat told Ruiz: "[Y]ou know that you dodged a bullet!" *Id.* Warden Moffat also commented that Scott had said to him that Ruiz was manipulative and that he could see why Scott would say that. Additionally, Captain Remacle remarked, "Ruiz, you are not a lawyer." *Id.*

During this period, Ruiz was also allegedly filing motions and other documents with the Supreme Court of Wyoming, the United States District Court for the District of Wyoming, the United States Court of Appeals for the Tenth Circuit, and the Supreme Court of the United States. Many of the motions and documents concerned an attempt by Ruiz to obtain a sentence reduction.

B. Procedural History

Ruiz filed suit under 42 U.S.C. § 1983 in the United States District Court for the District of Wyoming. The district court granted Ruiz leave to proceed in forma pauperis and screened Ruiz's complaint under 28 U.S.C. § 1915(e)(2), determining that he had failed to state a claim for relief, but granting him leave to file an amended complaint.

Ruiz then filed an amended complaint and incorporated the attachments to the original complaint by reference. The district court dismissed the amended complaint with prejudice for failure to state a claim and entered judgment against Ruiz. The district court noted that the amended complaint contained fewer additional facts about the alleged violations than the original complaint and, thus, suffered from the same deficiencies that

caused his previous complaint to fail screening. Specifically, the district court determined that Ruiz’s allegations were too vague to state a claim for retaliation and that he failed to “connect [the] dots” between being placed in segregation, comments by the defendants, and filing motions in court. *Id.* at 238.

Following the entry of judgment, Ruiz moved the district court to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The district court denied the motion. Ruiz timely appealed the dismissal of his amended complaint, and the district court granted him leave to proceed in forma pauperis on appeal.

II. STANDARD OF REVIEW

We review de novo the district court’s dismissal of an action under 28 U.S.C. § 1915(e)(2) for failure to state a claim, applying the same standards we employ to review dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In conducting our review, we accept all well-pleaded facts as true, view them in the light most favorable to the plaintiff, and draw all reasonable inferences in their favor. *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). Because Ruiz appears pro se, we construe his filings liberally, but we do not serve as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

III. DISCUSSION

Ruiz argues the district court erred in dismissing his First Amendment retaliation claims. For the following reasons, we affirm.

A. Official Capacity Claims

Ruiz’s claims are asserted against the defendants in both their official and individual capacities. A claim for monetary damages against a state actor in their official capacity is construed as a claim against the government entity for whom the person works. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Although a municipality cannot be held liable simply because it employs a tortfeasor, it can be liable for its “own illegal acts . . . that is, acts which the municipality has officially sanctioned or ordered.”

Pembaur v. City of Cincinnati, 475 U.S. 469, 479–80 (1986). Thus, a municipality may be accountable if deprivation of a constitutional right is inflicted pursuant to the “execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978).

Here, Ruiz’s amended complaint does not identify any policy or custom enforced by a governmental entity that caused his complained-of harm. Consequently, Ruiz’s official capacity claims fail to state a claim for which relief can be granted.

B. Individual Capacity Claims

Ruiz’s amended complaint also asserts that the defendants, in their individual capacities, retaliated against him in violation of the First Amendment. To state a claim for First Amendment retaliation, Ruiz must allege that (1) he engaged in a “constitutionally

protected activity,” (2) the defendants responded in a manner “that would chill a person of ordinary firmness from continuing to engage in that activity,” and (3) the defendants’ adverse action was “substantially motivated” by his constitutionally protected activity. *Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007) (quoting *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000)). We review the second element using an objective standard. *Id.*

Ruiz’s initial retaliation claim centers on a disciplinary action taken against him for removing food from the prison kitchen and subsequently being unable to access his computer account. This allegedly hindered his ability to file an Emergency Inmate Grievance Form in response to the theft charge or to work on unrelated legal documents. Ruiz admits, however, that he could not access his computer account due to his upcoming transfer.

“It is well-settled that ‘[p]rison officials may not retaliate against or harass an inmate because of the inmate’s exercise of his right of access to the courts.’” *Gee v. Pacheco*, 627 F.3d 1178, 1189 (10th Cir. 2010) (quoting *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir. 1990)). Nor may prison officials retaliate against prisoners for filing administrative grievances. *Williams v. Meese*, 926 F.2d 994, 998 (10th Cir. 1991). Even assuming Ruiz was attempting to engage in constitutionally protected activities on the computer, he fails to allege that he was denied access to the computer in response to his attempts to engage in such activity. Rather, his denial of access was due to his transfer to a work release program. Accordingly, Ruiz fails to state a claim for which relief can be granted on his first retaliation claim.

Ruiz's next retaliation claim pertains to his interactions with his caseworker, Scott. Ruiz engaged in constitutionally protected activities in filing grievances against Scott. *Williams*, 926 F.2d at 998. Liberally construing the amended complaint, Ruiz contends that he faced two distinct adverse actions in response: (1) placement in segregation, and (2) comments made by Warden Moffat and Captain Remacle upon his release from segregation.

On November 1, 2022, Ruiz filed a grievance against Scott and was later placed in segregation. However, that same day, there were allegations that Ruiz falsely claimed that Warden Moffat had arranged for a police escort and presence during Ruiz's planned meeting with Scott. Apart from the temporal proximity between his filing of a grievance and his placement in segregation, Ruiz does not otherwise allege that his transfer to segregation resulted from the filing of his grievance against Scott. Instead, "an obvious alternative explanation" for Ruiz being placed in segregation was for legitimate penological reasons associated with the prison staff's investigation into the allegations against him. *Twombly*, 550 U.S. at 567. Thus, Ruiz fails to allege that the defendants were substantially motivated to place him in segregation due to his filing of a grievance.

Concerning the statements made by Warden Moffat and Captain Remacle upon Ruiz's release from segregation, Ruiz does not allege facts showing that such comments would deter a person of ordinary firmness from continuing to engage in the filing of grievances. Consequently, Ruiz fails to state a claim for which relief can be granted on his second retaliation claim.

Lastly, Ruiz asserts that he faced retaliation due to his submission of motions and documents in various state and federal courts. Although such actions constitute constitutionally protected activity, *Gee*, 627 F.3d at 1189, Ruiz fails to allege facts showing that any adverse action was taken against him as a response to these activities. Therefore, Ruiz fails to state a claim for which relief can be granted on his last retaliation claim.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's dismissal of Ruiz's amended complaint with prejudice. Ruiz's pending Motion to Enter Documentation Evidence for Arbitration of Grievance Process is denied as moot.

Entered for the Court

Mary Beck Briscoe
Circuit Judge