

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

YOSAF DEVINE,)	
)	
Plaintiff,)	
)	
v.)	2:19-cv-00323-JDL
)	
CUMBERLAND COUNTY JAIL,)	
et al.,)	
)	
Defendants)	

**RECOMMENDED DECISION AFTER REVIEW OF COMPLAINT
PURSUANT TO 28 U.S.C. §§ 1915(e), 1915A**

In this action, Plaintiff, alleges that while he was an inmate at the Cumberland County Jail, Defendant Corbin made offensive comments to him and that Defendant Pike failed to process properly a grievance he filed based on Defendant Corbin’s comments. (Complaint, ECF No. 1.)

Plaintiff filed an application to proceed in forma pauperis (ECF No. 2), which application the Court granted. (ECF No. 4.) In accordance with the in forma pauperis statute, a preliminary review of Plaintiff’s complaint is appropriate. 28 U.S.C. § 1915(e)(2). Additionally, Plaintiff’s complaint is subject to screening “before docketing, if feasible or ... as soon as practicable after docketing,” because he is “a prisoner seek[ing] redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).

Following a review of the complaint, I recommend the Court dismiss the matter.

STANDARD OF REVIEW

When a party is proceeding in forma pauperis, “the court shall dismiss the case at any time if the court determines,” inter alia, that the action is “frivolous or malicious” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B). “Dismissals [under § 1915] are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

In addition to the review contemplated by § 1915, Plaintiff’s complaint is subject to screening under the Prison Litigation Reform Act because Plaintiff is currently incarcerated and seeks redress from governmental entities and officers. *See* 28 U.S.C. § 1915A(a), (c). The § 1915A screening requires courts to “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim ...; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

When considering whether a complaint states a claim for which relief may be granted, courts must assume the truth of all well-plead facts and give the plaintiff the benefit of all reasonable inferences therefrom. *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A complaint fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The relevant question ... in assessing plausibility is not whether the complaint makes any particular factual allegations but, rather, whether ‘the complaint warrant[s] dismissal because it failed *in toto*

to render plaintiffs' entitlement to relief plausible.'" *Rodríguez-Reyes v. Molina-Rodríguez*, 711 F.3d 49, 55 (1st Cir. 2013) (quoting *Twombly*, 550 U.S. at 569 n. 14). Although a pro se plaintiff's complaint is subject to "less stringent standards than formal pleadings drafted by lawyers," *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the complaint may not consist entirely of "conclusory allegations that merely parrot the relevant legal standard," *Young v. Wells Fargo, N.A.*, 717 F.3d 224, 231 (1st Cir. 2013). *See also Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980) (explaining that the liberal standard applied to the pleadings of pro se plaintiffs "is not to say that pro se plaintiffs are not required to plead basic facts sufficient to state a claim").

BACKGROUND FACTS¹

Plaintiff alleges that while he was working as a trustee in the kitchen at the jail, his supervisor, Defendant Corbin, evidently an employee of the jail or the county, made racially offensive comments to him on two occasions. (Complaint at 3, Attachment at 1.) Following the second incident, on October 8, 2018, Plaintiff filed a grievance regarding Defendant Corbin's comments. Defendant Pike reviewed Plaintiff's grievance, spoke with Defendant Corbin, and on October 1, 2018, on the grievance form, advised Plaintiff that he (Defendant Pike) would "get with [Plaintiff] and [Defendant Corbin] next week to discuss in person and make sure you have no issues." (Attachment at 1.) Plaintiff alleges

¹ The facts set forth herein are derived from Plaintiff's complaint and the Cumberland County Jail inmate grievance form filed with the complaint (ECF Nos. 1 & 1-1.). Plaintiff named the Cumberland County Jail as a party to this action, as well as Defendants Corbin and Pike. While the jail facility is not a proper defendant, *see Collins v. Kennebec County Jail*, 2012 WL 4326191, at *3 (D. Me. May 31, 2012) ("The Kennebec County Jail is not a governmental entity or a proper party defendant to this lawsuit. It is a building."), the Court can reasonably construe the complaint to assert claims against Cumberland County.

that Defendant Pike failed to follow up with Plaintiff or Defendant Corbin. (Complaint at 3.)

DISCUSSION

Plaintiff asserts Defendants have not administered the applicable grievance proceedings properly. A prisoner, however, does not have a constitutional right to a particular prison grievance procedure, or even a right to file a prison grievance; rather, the Due Process Clause entitles prisoners to predeprivation process whenever the state subjects them to an “atypical and significant hardship ... in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991) (per curiam) (“[T]he prisoner’s right to petition the government for redress is the right of access to the courts, which is not compromised by the prison’s refusal to entertain his grievance.”); *Charriez v. Sec’y, Florida Dep’t of Corr.*, 596 F. App’x 890, 895 (11th Cir. 2015) (unpublished) (“Because the prison grievance procedure does not create a protected liberty interest, Charriez does not have a federal constitutional right within that administrative-grievance procedure.”); *Von Halcy v. Clements*, 519 F. App’x 521, 523 (10th Cir. 2013) (unpublished) (“Von Halcy cannot state a due process claim based on allegations of an ineffective grievance reporting system.”); *Brown v. Graham*, 470 F. App’x 11, 13 (2d Cir. 2012) (“Brown’s argument that he has a federally-protected liberty interest in the state’s compliance with its own prison grievance procedures is meritless.”); *Butler v. Brown*, 58 F. App’x 712 (9th Cir. 2003) (“[A] prisoner has no constitutional right to prison grievance procedures.”); *Young v. Gundy*, 30 F. App’x 568, 569 – 70 (6th Cir. 2002) (unpublished) (“[T]here is no inherent constitutional right to an

effective prison grievance procedure.”). Because prison grievance procedures are not mandated or governed by the Constitution or other federal law, Plaintiff has not and cannot assert an actionable federal claim based on Defendants’ administration of the grievance/complaint process.

Plaintiff’s allegations regarding Defendant Corbin’s offensive comments also do not support a federal claim. “The First Circuit has established that ‘[f]ear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute an invasion of an identified liberty interest.’” *Badger v. Correct Care Sols.*, No. 1:15-CV-00517-JAW, 2016 WL 1430013, at *4, 2016 U.S. Dist. LEXIS 48130, at *6 (D. Me. Apr. 11, 2016) (quoting *Pittsley v. Warish*, 927 F.2d 3, 7 (1st Cir. 1991), *abrogated on other grounds*, *Martinez v. Cui*, 608 F.3d 54 (1st Cir. 2010)). See also *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997) (“It is clear that verbal abuse by a prison guard does not give rise to a cause of action under § 1983.”). As the Court in *Lapomarda v. Skibinski*, 2009 WL 4884500, No. 9-377-P-H, at *3 n.2 (D. Me. Dec. 10, 2009) (quoting *DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir. 2000)) explained, “[t]he use of racially derogatory language, while unprofessional and deplorable, does not violate the Constitution. Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prisoner equal protection of the laws.”

In short, a review of Plaintiff’s complaint reveals that Plaintiff has failed to allege facts that would support an actionable federal claim.

CONCLUSION

Based on the foregoing analysis, after a review pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A(a), I recommend the Court dismiss the matter.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 15th day of August, 2019.