

United States District Court  
Southern District of Texas

**ENTERED**

September 12, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DAVID LEE WHEELER,

§

*Plaintiff,*

§

§

v.

§

Civil Action No. H-18-3180

§

§

TONY O’HARE, *et al.*,

§

§

*Defendants.*

§

**MEMORANDUM OPINION AND ORDER**

Plaintiff, a state inmate proceeding *pro se*, filed this section 1983 lawsuit claiming that Texas Department of Criminal Justice (“TDCJ”) correctional officers unlawfully confiscated, stole, or lost his watch, ring, and shoes. He seeks monetary damages for the loss of the property items. The Court **DISMISSES** this lawsuit for the reasons that follow.

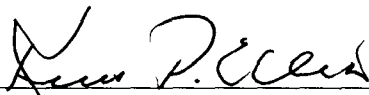
It is well settled that the random and unauthorized deprivation of a prisoner’s property by a state actor does not violate the prisoner’s due process rights if the state provides a meaningful post-deprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Texas provides a remedy for inmates whose property has been taken or destroyed in an unauthorized manner. *See Myers v. Klevenhagen*, 97 F.3d 91, 95 (5th Cir. 1996); *Marshall v. Norwood*, 741 F.2d 761, 764 (5th Cir. 1984); *Aguilar v. Chastain*, 923 S.W.2d 740, 743–44 (Tex. Crim. App. 1996); *see also* TEX. GOV’T CODE §§ 501.007, 501.008. Therefore, plaintiff’s claims concerning the loss of his personal property have no basis in federal law

and must be dismissed for failure to raise a viable section 1983 claim. *See Murphy v. Collins*, 26 F.3d 541, 543–44 (5th Cir. 1994). No other constitutional claims are raised by plaintiff’s factual allegations.

This lawsuit is **DISMISSED WITH PREJUDICE** for failure to state a viable claim for which relief can be granted under section 1983. Any and all pending motions are **DISMISSED AS MOOT**. This dismissal constitutes a “strike” for purposes of section 1915(g).

The Clerk is to provide a copy of this order to plaintiff, to TDCJ–Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, and to the Clerk of the United States District Court for the Southern District of Texas, Houston Division, 515 Rusk Street, Houston, Texas, 77002, Attention: Three-Strikes List Manager, at the following email: Three\_Strikes@txs.uscourts.gov.

**SIGNED** at Houston, Texas on the 11<sup>th</sup> day of September, 2018.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE