

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**September 25, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

MARTIN JAMES PETERSON,

Plaintiff - Appellant,

v.

JOSEPH A. TOMICH, Deputy,  
Sweetwater County Sheriff's Office;  
SWEETWATER COUNTY  
SHERIFF; SWEETWATER  
COUNTY SHERIFF'S  
DEPARTMENT,

Defendants - Appellees.

No. 22-8058  
(D.C. No. 1:22-CV-00116-SWS)  
(D. Wyo.)

**ORDER AND JUDGMENT\***

Before **HARTZ, KELLY, and BACHARACH**, Circuit Judges.

Mr. Martin James Peterson is a Wyoming prisoner who alleges harassment, planting of evidence, excessive force, and unreasonable failure to set a bail amount. Because Mr. Peterson was incarcerated and

\* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and Mr. Peterson's brief. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

proceeding in forma pauperis, the district court needed to screen the complaint to determine whether it had stated a valid claim. 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2)(B)(ii). After screening the complaint, the court concluded that Mr. Peterson hadn't stated a valid claim. Mr. Peterson appeals, and we must conduct de novo review. *Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009). Upon de novo review, we affirm the dismissal.

Because Mr. Peterson is pro se, we liberally construe the complaint and his appeal brief. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (complaint); *McKinney v. State of Okla.*, 925 F.2d 363, 365 (10th Cir. 1991) (appeal briefs). But we can't construct arguments for Mr. Peterson or act as his advocate. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013) (can't act as advocate); *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (can't construct arguments). Given our inability to act as Mr. Peterson's advocate, we must determine whether he has given a reason to question the district court's ruling, for even pro se litigants must state what was wrong with the district court's ruling. *See GeoMetWatch Corp. v. Behunin*, 38 F.4th 1183, 1231 (10th Cir. 2022). We thus consider each of Mr. Peterson's claims, the district court's reasons for dismissal, and Mr. Peterson's response.

He alleges that a sheriff, a deputy, and a sheriff's department planted evidence and obtained charges by lying. The district court treated these

allegations as a claim for malicious prosecution. The court thus considered the elements of malicious prosecution:

1. causation between the defendants' conduct and the plaintiff's continued confinement or prosecution,
2. termination of the action in the plaintiff's favor,
3. lack of probable cause for the continued confinement or prosecution,
4. malice, and
5. damages.

*Shrum v. Cooke*, 60 F.4th 1304, 1310 (10th Cir. 2023).

The district court concluded that Mr. Peterson had not alleged three of the elements: (1) causation, (2) termination in his favor, and (3) lack of probable cause. On appeal, Mr. Peterson does not question the district court's dismissal based on his failure to allege a favorable termination; and the complaint itself shows that his criminal case did not result in a favorable outcome. Mr. Peterson has thus given us no basis to disturb the district court's ruling.

The same is true of his claim involving excessive force. For this claim, Mr. Peterson needed to allege facts showing that the defendants' actions during his arrest had been objectively unreasonable "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989) (internal quotation marks omitted). Mr. Peterson alleged that the

defendants had injured him by putting the handcuffs on too tightly and ramming him into the side of a patrol car. But in the complaint, Mr. Peterson did not describe the circumstances surrounding the incident or otherwise provide context for the handcuffing and alleged use of force. The district court thus concluded that Mr. Peterson hadn't supplied enough details to allow meaningful assessment of the reasonableness of the defendants' actions. On appeal, Mr. Peterson doesn't question this rationale. So again, we have no basis to disturb the district court's ruling.

Mr. Peterson also alleged that the defendants had violated the Eighth Amendment by detaining him for eight months without setting a bail amount. On this claim, the district court reasoned that Mr. Peterson had failed to allege that the defendants deliberately or recklessly misled the judges responsible for setting bail.

Under Wyoming law, judges have the exclusive authority to determine the bail amount. Wyo. R. Crim. P. 46.1. Given the exclusivity of that authority, sheriffs bear no responsibility to determine the availability of pretrial release. *See* Wyo. R. Crim. P. 46.1.

With the limited role of custodial officers in bail decisions in mind, we consider the allegations in the complaint. There Mr. Peterson hadn't alleged

- a failure of the sheriff to do what Wyoming law required or

- a particular misstatement to a judge addressing the possibility of bail.

Given these omissions in the complaint, the district court didn't err in concluding that Mr. Peterson had failed to link the defendants to the alleged injury. *See Galen v. Cnty. of L.A.*, 477 F.3d 652, 663 (9th Cir. 2007) (law-enforcement officers can incur liability for excessive bail “only if they prevented the [judicial officer] from exercising his independent judgment”); *Walden v. Carmack*, 156 F.3d 861, 874 (8th Cir. 1998) (concluding that a sheriff couldn't incur liability for excessive bail because the presiding judge had sole discretion to set the amount).

Because Mr. Peterson hasn't provided a reason to disturb the dismissal, we affirm.<sup>1</sup>

Entered for the Court

Robert E. Bacharach  
Circuit Judge

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<sup>1</sup> We grant Mr. Peterson's motion for leave to proceed in forma pauperis.