

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 11-2306

Eugene Issac Pitts,	*
	*
Appellant,	*
	*
v.	*
	*
Larry Jegley, Prosecuting Attorney,	*
Pulaski County; W. A. McCormick,	* Appeal from the United States
Chief Deputy Prosecuting Attorney,	* District Court for the
Pulaski County; Durthey Bishop,	* Eastern District of Arkansas.
Investigator, Pulaski County; Kermit	*
Channell, Executive Director, Arkansas	* [UNPUBLISHED]
State Crime Laboratory; Lisa Channell,	*
Trace Evidence Analyst, Arkansas	*
State Crime Lab; Stephanie Gray,	*
Evidence Technician, Arkansas	*
Department of Correction; Jeffrey M.	*
Rosenzweig, Attorney, Little Rock	*
Arkansas,	*
	*
Appellees.	*

Submitted: November 2, 2011
Filed: November 7, 2011

Before MURPHY, BOWMAN, and GRUENDER, Circuit Judges.

PER CURIAM.

Eugene Pitts appeals the district court's¹ preservice dismissal of his 42 U.S.C. § 1983 action based on the alleged "bad faith" mishandling and loss of evidence. We grant Pitts leave to proceed on appeal in forma pauperis. Upon de novo review, we conclude that dismissal was proper because the complaint failed to state a claim. See Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (pleading that offers labels and conclusions or formulaic recitation of elements will not do; claim has facial plausibility when plaintiff pleads factual content that allows court to draw reasonable inference that defendant is liable for misconduct alleged); Daniels v. Williams, 474 U.S. 327, 328 (1986) (Due Process Clause is not implicated by negligent act of official causing unintended loss of or injury to life, liberty, or property); Holbird v. Armstrong-Wright, 949 F.2d 1019, 1020 (8th Cir. 1991) (per curiam) (conduct of counsel, either retained or appointed, does not constitute state action for purposes of § 1983); see also Phipps v. FDIC, 417 F.3d 1006, 1010 (8th Cir. 2005) (court may affirm on any basis supported by record). Accordingly, we affirm.

¹The Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas.