

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

JOSEPH LEE LINDSEY, JR.,  
ADC #132800

PLAINTIFF

v.

No. 4:11CV00360 JLH

LEROY BROWNLEE, Chairman,  
Arkansas Parole Board, et al.

DEFENDANTS

**ORDER OF DISMISSAL**

Plaintiff, Joseph Lee Lindsey, Jr., is a prisoner in the Wrightsville Unit of the Arkansas Department of Correction. He has commenced this *pro se* § 1983 action alleging that Defendants, all of whom are members of the Arkansas Parole Board, violated his constitutional rights. *See* docket entry #2. Pursuant to the screening function mandated by 28 U.S.C. § 1915A, the case will be dismissed, with prejudice, for failing to state a claim upon which relief may be granted.<sup>1</sup>

Plaintiff alleges that, on January 27, 2011 and February 20, 2011, Defendants violated his Fourteenth Amendment right to due process of law when they deferred making a parole decision until after he completed the Substance Abuse Treatment Program. *See* docket entry #2.

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<sup>1</sup> The Prison Litigation Reform Act requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or a portion thereof if the prisoner has raised claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

The Court is mindful that, when making this determination, the court must “accept as true all factual allegations in the complaint, [while] giving no effect to conclusory allegations of law.” *Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 521 (8th Cir. 2007). Importantly, the complaint must “assert facts that affirmatively and plausibly suggest,” *Id.*, “above the speculative level,” that the plaintiff is entitled to relief and mere conclusions or a “formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-63, 127 S. Ct. 1955, 1965-69 (2007) (abrogating the “no set of facts” standard set forth in *Conely v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02 (1957)). Nevertheless, in *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007), the Supreme Court emphasized that a *pro se* prisoner’s § 1983 complaint must be “liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers.”

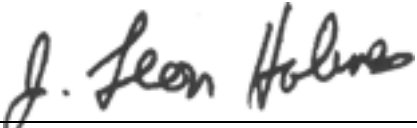
Plaintiff has failed to state a viable § 1983 claim for two reasons. First, it is well settled that parole board members are entitled to absolute immunity in considering and deciding parole questions. *See Deloria v. Lightenberg*, 400 Fed. App'x 117 (8th Cir. 2010); *Ambrose v. Schultz*, 215 Fed. App'x 564 (8th Cir. 2007); *Figg v. Russell*, 433 F.3d 593, 598 (8th Cir. 2006); *Anton v. Getty*, 78 F.3d 393, 396 (8th Cir. 1996).

Second, a prisoner has a liberty interest in parole, and thus a right to due process of law, only if the state statutes or regulations place substantive limitations on the exercise of official discretion or are phrased in mandatory terms. *See Board of Pardons v. Allen*, 482 U.S. 369, 373-81 (1987); *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). The Eighth Circuit has held that the Arkansas parole statutes are purely discretionary and do not establish any right to release on parole which would invoke due process protection. *Hamilton v. Brownlee*, 237 Fed. App'x 114 (8th Cir. 2007); *Pittman v. Gaines*, 905 F.2d 199, 200-01 (8th Cir. 1990); *Parker v. Corrothers*, 750 F.2d 653, 655-57 (8th Cir. 1984).

IT IS THEREFORE ORDERED THAT:

1. Pursuant to the screening process mandated by 28 U.S.C. § 1915A, this case is DISMISSED, WITH PREJUDICE, for failing to state a claim upon which relief may be granted.
2. Dismissal CONSTITUTES a “strike” pursuant to 28 U.S.C. § 1915(g).
3. The Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order of Dismissal and the accompanying Judgment would not be taken in good faith.

DATED this 10th day of May, 2011.

  
UNITED STATES DISTRICT JUDGE