

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

DUSTIN WAYNE NORMAN

PLAINTIFF

v.

Civil No. 5:19-cv-05237

SERGEANT JEB BYRD, Badge #414,
Washington County Detention Center

DEFENDANT

OPINION AND ORDER

Plaintiff, Dustin Wayne Norman, currently an inmate of the Washington County Detention Center (“WCDC”), filed this civil rights action under 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis* (“IFP”).

Plaintiff’s Complaint (ECF No. 1) is before the Court for preservice screening under the provisions of the Prison Litigation Reform Act (PLRA). Pursuant to 28 U.S.C. § 1915A, the Court has the obligation to screen any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

I. BACKGROUND

According to the allegations of the Complaint (ECF No. 1), on December 6, 2019, Norman was informing Sergeant Byrd that he needed to “feed me . . . portion size of my diet that I was on.” Sergeant Byrd responded negatively. At that point, Norman responded: “F--- You.” Sergeant Byrd replied that Norman was not “his type.” Norman believed that Sergeant Byrd was referring to his charges. Norman believes this constituted defamation of his character and judgment.

II. LEGAL STANDARD

Under the PLRA, the Court is obligated to screen the case prior to service of process being

issued. The Court must dismiss a complaint, or any portion of it, if it contains claims that: (1) are frivolous, malicious, or fail to state a claim upon which relief may be granted, or (2) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A claim is frivolous if “it lacks an arguable basis either in law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim fails to state a claim upon which relief may be granted if it does not allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “In evaluating whether a pro se plaintiff has asserted sufficient facts to state a claim, we hold ‘a pro se complaint, however inartfully pleaded ... to less stringent standards than formal pleadings drafted by lawyers.’” *Jackson v. Nixon*, 747 F.3d 537, 541 (8th Cir. 2014) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)).

III. DISCUSSION

The essential elements of a § 1983 claim are: (1) that the defendant(s) acted under color of state law, and (2) that the alleged wrongful conduct deprived the plaintiff of a constitutionally protected federal right. *Schmidt v. City of Bella Vista*, 557 F.3d 564, 571 (8th Cir. 2009). To state a claim, plaintiff must establish that each defendant “personally violated plaintiff’s constitutional rights” *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014)(citation omitted).

Slander, defamation, and humiliation, while unprofessional and distasteful conduct, does not state a constitutional violation. “[D]efamation, per se, is not actionable under section 1983. *Underwood v. Pritchard*, 638 F.2d 60, 62 (8th Cir. 1981). The Supreme Court has held that a person’s interest in his reputation is not considered liberty or property protected by the due process clause. *Paul v. Davis*, 424 U.S. 693, 711-12 (1976). In other words, the “ Supreme Court has made clear that federal courts are not to view defamatory acts as constitutional violations.”

Boyanowski v. Capital Area Intermediate Unit, 215 F.3d 396, 400 (3d Cir. 2000).

Similarly, “[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.” *King v. Olmsted Cty.*, 117 F.3d 1065, 1067 (8th Cir. 1997). Taunts, name calling, and the use of offensive language does not state a claim of constitutional dimension. *McDowell v. Jones*, 990 F.2d 433, 434 (8th Cir. 1993) (inmate’s claims of general harassment and of verbal harassment were not actionable under § 1983).

This claim is subject to dismissal.

IV. CONCLUSION

The claims asserted are subject to dismissal because they are frivolous or fail to state claims upon which relief may be granted. Therefore, this case is **DISMISSED WITHOUT PREJUDICE**. See 28 U.S.C. § 1915(e)(2)(B)(i-ii).

This dismissal constitutes a strike within the meaning of the Prison Litigation Reform Act. The Clerk is directed to enter a § 1915(g) strike flag on this case.

IT IS SO ORDERED this 16th day of January 2020.



P. K. HOLMES, III
U.S. DISTRICT JUDGE