

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY LEON CLOWERS,

Plaintiff,

VS.

MARGARET MIMS, et al.,

Defendants

Case No. 1:14 cv 01488 AWI GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

I. Screening Requirement

Plaintiff is a Fresno County Jail inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
3 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
4 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
5 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
6 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
7 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
8 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
9 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
10 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
11 (9th Cir. 1982)).

12 **II. Plaintiff’s Claims**

13 Plaintiff, an inmate in the Fresno County Jail, brings this civil rights action against the
14 Fresno County Sheriff, Fresno Police Chief Dyer, and Fresno Police Officer B. Freer. Plaintiff
15 claims that he is being denied access to the law library while in jail, and also alleges conduct
16 relating to his arrest.

17 **A. Access to Courts**

18 Because states must ensure indigent prisoners meaningful access to the courts, prison
19 officials are required to provide either (1) adequate law libraries, or (2) adequate assistance from
20 persons trained in the law. Bounds v. Smith, 430 U.S. 817, 828 (1977). Under prior law,
21 Bounds was treated as establishing “core requirements,” such that a prisoner alleging deprivation
22 of the Bounds minima need not allege actual injury to a state constitutional claim. Sands v.
23 Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). Recent Supreme Court precedent abolishes such
24 approach, however, providing that all inmate claims for interference with access to the court
25 include “actual injury” as an element. Casey v. Lewis, 518 U.S. 343 (1996).

26 To establish a Bounds violation, prisoner must show that his prison’s law library or legal
27 assistance program frustrated or impeded his ability to pursue a nonfrivolous legal claim. Casey,
28

1 supra, 518 U.S. 343, 347. The right of access does not require the State to “enable the prisoner
2 to discover grievances” or to “litigate effectively once in court.” The Casey court further limits
3 the right of access to the courts, as follows:

5 Finally, we must observe that the injury requirement is not
6 satisfied by just any type of frustrated legal claim . . . Bounds does
7 not guarantee inmates the wherewithal to transform themselves
8 into litigating engines capable of filing everything from
9 shareholder derivative actions to slip-and-fall claims. The tools it
10 requires to be provided are those that the inmates need in order to
11 attack their sentences, directly or collaterally, and in order to
challenge the conditions of their confinement. Impairment of any
other litigating capacity is simply one of the incidental (and
perfectly constitutional) consequences of conviction and
incarceration.

12 Casey, 518 U.S. at 346.

13 Here, the Court finds that Plaintiff fails to state a claim for relief. Although Plaintiff
14 alleges that he is denied access to the law library and having difficulty in defending himself in
15 his criminal case, there are no allegations or indications that Plaintiff is representing himself.
16 Any concerns with Plaintiff’s criminal defense should be addressed to his defense counsel. If
17 Plaintiff is indeed representing himself (and has had such representation ordered by the court), he
18 should clearly allege so. Further, Plaintiff must allege facts indicating that an identifiable
19 individual defendant that has caused him actual injury as defined above.

20 **B. Criminal Process**

21 Plaintiff also sets forth a rambling narrative, challenging certain conduct of police
22 officers in his underlying arrest and generally challenging the validity of the criminal process.
23 Plaintiff names as Defendants the Chief of Police Dyer and Officer Freer. Plaintiff’s complaint
24 is vague and rambling, and fails to specifically charge either Defendant with specific conduct
25 indicating that they violated any right of Plaintiff’s.

26 Further, these allegations are unrelated to any action regarding the conditions of
27 Plaintiff’s confinement at the Fresno County Jail. “A party asserting a claim to relief as an

original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or alternate claims, as many claims, legal, equitable or maritime, as the party has against an opposing party.” Fed. R. Civ. P. 18(a). Thus, multiple claims against a single party are permissible, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass (a multiple claim, multiple defendant) suit produces, but also to ensure that prisoners pay the required filing fees. The Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without the prepayment of the required fees. 28 U.S.C. § 1915(g). George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Accordingly, this claim should therefore be dismissed from this action. Should Plaintiff desire to proceed on any claims regarding his underlying arrest, he should do so by filing a separate action.

Accordingly, this claim should therefore be dismissed from this action. Should Plaintiff desire to proceed on any claims regarding his underlying arrest, he should do so by filing a separate action.

C. Relief

As a remedy, Plaintiff seeks relief from custody. When a prisoner challenges the legality or duration of his custody, or raises a constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990), cert. denied, 498 U.S. 1126 (1991). Plaintiff is therefore advised that any civil rights action that seeks as relief his release from custody will be dismissed without prejudice to re-filing as a new, separate petition for writ of habeas corpus.

III. Conclusion and Order

The Court has screened Plaintiff's complaint and finds that it does not state any claims upon which relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not change the nature of this suit by adding new, unrelated claims in his amended complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
2 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal
3 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must
4 be [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp. v.
5 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

6 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
8 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
9 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an
10 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d
11 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
12 Forsyth, 114 F.3d at 1474.

13 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 14 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a
15 claim;
- 16 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 17 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
18 an amended complaint;
- 19 4. Plaintiff may not add any new, unrelated claims to this action via his amended
20 complaint and any attempt to do so will result in an order striking the amended
21 complaint; and
- 22 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
23 action be dismissed, with prejudice, for failure to state a claim.

24
25
26 IT IS SO ORDERED.

Dated: February 5, 2015

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE