

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELVIN DeVAN DANIEL,)	
)	
Plaintiff(s),)	No. C 12-3008 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
OFFICER McKEON, et al.,)	(Docket # 2)
)	
Defendant(s).)	

Plaintiff has filed a pro se complaint under 42 U.S.C. § 1983 alleging that City of Antioch Police Officers McKeon and Moorefield violated his constitutional rights when they failed to take a police report after he reported being robbed from his van outside a Bonfare Market. Plaintiff alleges that defendants only made out a traffic collision report.

Plaintiff seeks damages and leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915, which, based solely on his affidavit of poverty, is granted.

DISCUSSION

A. Standard of Review

Plaintiffs proceeding IFP are subject to the screening requirements of 28 U.S.C. § 1915. Under 28 U.S.C. § 1915 (e)(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 . . . is frivolous or malicious . . . or fails to state a claim." Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 The Due Process Clause does not require the state to protect the life,
7 liberty and property of its citizens against invasion by private actors. DeShaney
8 v. Winnebago County Dep't of Social Services, 489 U.S. 189, 195 (1989).
9 Consequently, the benefit that a party may receive from having someone arrested
10 for a crime generally does not trigger protections under the Due Process Clause.
11 Castle Rock v. Gonzales, 545 U.S. 748, 768 (2005). There are two exceptions –
12 the "state-created danger" doctrine and the "special relationship" doctrine – but
13 neither is implicated in this case.

14 Unfortunately for plaintiff, his allegations that police officers failed to take
15 a police report of a robbery against him, although troubling, fail to state a
16 cognizable § 1983 claim for violation of his federal rights. Cf. at 768-69. But
17 this is not to say that plaintiff is without remedy in the state courts, where he may
18 well be able to pursue a claim for violation of state law.

19 **CONCLUSION**

20 For the foregoing reasons, the complaint is DISMISSED for failure to
21 state claim under the authority of 28 U.S.C. § 1915(e)(2).

22 The clerk shall enter judgment in accordance with this order, terminate all
23 pending motions as moot, and close the file.

24 SO ORDERED.

25 DATED: June 18, 2012


26 CHARLES R. BREYER
27 United States District Judge

28 G:\PRO-SE\CRB\CR.12\Daniel, M.12-3008.dismissal.wpd