

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01280-BNB

KENT FRENCH,

Plaintiff,

v.

NURSE PASHA, and
CAPTAIN GIBSON,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 30 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff Kent French is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Sterling, Colorado, Correctional Facility. On July 17, 2009, pursuant to Magistrate Judge Boyd N. Boland's June 6, 2009, Order, Mr. French filed an Amended Complaint. The Court must construe Mr. French's Amended Complaint liberally because he is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a *pro se* litigant's advocate. *Hall*, 935 F.2d at 1110.

A legally frivolous claim is one in which a plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). For the reasons stated below, the Court will dismiss the Complaint as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

In the Amended Complaint, Mr. French states that both Defendants verbally threatened him. Specifically, Mr. French asserts that Captain Gibson threatened him


with lockdown, when Mr. French stated that he had filed a lawsuit against Defendants. Mr. French seeks money damages.

No matter how inappropriate, verbal harassment and threats without more do not state an arguable constitutional claim. **See *Northington v. Jackson***, 973 F.2d 1518, 1524 (10th Cir. 1992); ***Cumbey v. Meachum***, 684 F.2d 712, 714 (10th Cir. 1982) (per curiam); ***Collins v. Cundy***, 603 F.2d 825, 827 (10th Cir. 1979) (per curiam). Mr. French does not allege that Defendants physically injured or harmed him or used excessive force against him. Plaintiff, therefore, fails to state a claim that rises to the level of a constitutional deprivation with respect to his verbal harassment or threat claims against Defendants. Accordingly, it is

ORDERED that the Complaint and the action are dismissed as **legally frivolous** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

DATED at Denver, Colorado, this 29 day of July, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-01280-BNB

Kent French
Prisoner No. 112709
Sterling Correctional Facility
PO Box 6000 - Unit 3 C 108
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 7/30/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk