

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01975-BNB

KENT FRENCH,

Plaintiff,

v.

WARDEN OF SCF,  
LT. FITZGERALD, SCF, and  
SGT THODE, SCF,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

**SEP 23 2009**

**GREGORY C. LANGHAM**  
CLERK

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ORDER OF DISMISSAL

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Plaintiff Kent French is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Sterling, Colorado, Correctional Facility. On September 11, 2009, pursuant to Magistrate Judge Boyd N. Boland's August 28, 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.

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint at any time if the claims asserted are frivolous or if the action fails to state a claim. 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. *See*

***Neitzke v. Williams*** , 490 U.S. 319, 324 (1989). For the reasons stated below, the Court will dismiss the Complaint and action as legally frivolous.

In the Amended Complaint, Mr. French sets forth two claims. In Claim One, Mr. French asserts that Defendant Lt. Fitzgerald wrote him up repeatedly for minor C.O.P.D. violations. In Claim Two, Mr. French asserts that Defendant Sgt. Thode wrote him up for leaving his legal file in "Programs" causing him pain and suffering. (Compl. at 5.) Mr. French seeks money damages and release from prison. Release from prison is not a proper request for relief in a 42 U.S.C. § 1983 action.

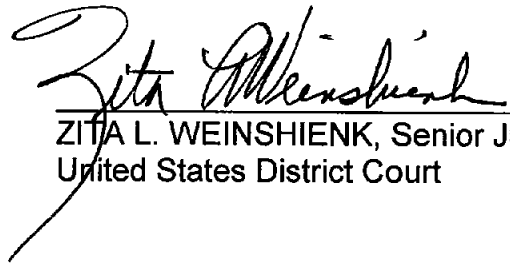
In the August 28, 2009, Order to Amend, Magistrate Judge Boland instructed Mr. French to state what specific legal right each named Defendant violated pursuant to ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007). Mr. French, nonetheless, in the Amended Complaint fails to assert a violation of his constitutional rights. Even if the Court were to construe his claims as asserted under the Eighth or Fourteenth Amendments, Mr. French's claims are frivolous. Mr. French does not have a constitutional right, per se, not to be "written-up" for minor DOC disciplinary infractions. Also, Mr. French's pain and suffering claim is conclusory and vague.

Furthermore, even if Mr. French's claims were nonfrivolous, he fails to assert how Defendant SCF Warden personally participated in either Claim One or Claim Two. Magistrate Judge Boland, in the August 28, 2009, Order, instructed Mr. French that he must assert how each defendant personally participated any alleged constitutional violation. 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 22 day of Sept., 2009.

BY THE COURT:

  
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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-01975-BNB

Kent French  
Prisoner No. 112709  
Sterling Correctional Facility  
PO Box 6000  
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 9/23/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk