

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

DAVID PANNELL,)	
)	
Plaintiff,)	
)	
vs.)	CAUSE NO. 3:17-CV-272
)	
BESSIE LEONARD,)	
)	
Defendant.)	

OPINION AND ORDER

This matter is before the Court on the State 1983 Civil Rights Complaint, filed by David Pannell, a *pro se* prisoner, in the LaPorte Superior Court (46D01-1703-PL-425), which the defendants removed to this court on March 6, 2017. Pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. FED. R. CIV. P. 12(b)(6) provides for the dismissal of a complaint, or any portion of a complaint, for failure to state a claim upon which relief can be granted. Courts apply the same standard under § 1915A as when addressing a motion under RULE 12(b)(6). *Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). "In order to state a claim under § 1983 a plaintiff must allege: (1) that defendants deprived him of a federal constitutional right; and (2) that the defendants acted under color of state law." *Savory v. Lyons*, 469 F.3d 667, 670 (7th Cir. 2006).

Here, Pannell is a convicted inmate and currently housed at the Indiana State Prison. He alleges that false disciplinary charges were filed against him by Bessie Leonard on June 13, 2016, when she wrote a conduct report alleging that Pannell committed "Threatening" against her during a law library visit. On June 23, 2016, Pannell was found guilty of "Threatening" by a disciplinary hearing officer. ECF 3 at 11. Pannell argues that Leonard filed those charges against him in retaliation for his past actions. However, this is not the proper proceeding to challenge the prison disciplinary hearing board's finding because "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement . . ." *Heck v. Humphrey*, 512 U.S. 477, 481 (1994).

In *Edwards v. Balisok*, 520 U.S. 641 (1997), the United States Supreme Court made clear that the principles of *Heck* also apply to prison disciplinary cases.

In *Heck*, this Court held that a state prisoner's claim for damages is not cognizable under 42 U.S.C. § 1983 if a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence, unless the prisoner can demonstrate that the conviction or sentence has previously been invalidated.

Edwards, 520 U.S. at 643 (citation and quotation marks omitted). Here, Pannell admits that he was found guilty of that offense, (ECF 3 at 11), and has not alleged that the finding of guilt has since been invalidated. Because a finding of liability in this case would inherently undermine the validity of his disciplinary hearing, he

may not proceed with this claim against Bessie Leonard until that finding is overturned on administrative appeal or in a habeas corpus proceeding.

Though it is usually necessary to permit a plaintiff the opportunity to file an amended complaint when a claim is dismissed *sua sponte*, see *Luevano v. Wal-Mart*, 722 F.3d 1014 (7th Cir. 2013), that is unnecessary where the amendment would be futile. *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009) (“[C]ourts have broad discretion to deny leave to amend where . . . the amendment would be futile.”) Such is the case here. Because Pannell concedes that he was found guilty of the underlying disciplinary charge, it is futile to pursue this claim until that disciplinary charge has been overturned.

For the reason set forth above, the court **DISMISSES** this case without prejudice.

DATED: April 19, 2017

**/s/ RUDY LOZANO, Judge
United States District Court**