

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

TYLER SCOTT FERRELL,)
vs.)
Plaintiff,)
vs.) Case No. 2:16-cv-0442-WTL-MJD
COMMISSIONER INDIANA DEPARTMENT)
OF CORRECTION, DICK BROWN,)
Defendants.)

Entry Dismissing Complaint and Directing Further Proceedings**I.**

The plaintiff's request to proceed *in forma pauperis* was granted by previous entry. The plaintiff is assessed an initial partial filing fee of \$4.00 (Four Dollars). He shall have **through February 28, 2017**, to pay this sum to the clerk.

II.

The plaintiff is a prisoner currently incarcerated at Wabash Valley Correctional Facility. Because the plaintiff is a "prisoner" as defined by 28 U.S.C. § 1915(h), this Court has an obligation under 28 U.S.C. § 1915A(b) to screen his complaint before service on the defendants. Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss the complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). To survive dismissal, [the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when

the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Pro se complaints such as that filed by the plaintiff are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Obriecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

The plaintiff's claims are brought pursuant to 42 U.S.C. § 1983. A cause of action is provided by 42 U.S.C. § 1983 against “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” of the United States. Section 1983 is not itself a source of substantive rights; instead, it is a means for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (citing *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). The initial step in any § 1983 analysis is to identify the specific constitutional right which was allegedly violated. *Id.* at 394; *Kernats v. O'Sullivan*, 35 F.3d 1171, 1175 (7th Cir. 1994); *see also Gossmeier v. McDonald*, 128 F.3d 481, 489-90 (7th Cir. 1997). Constitutional claims are to be addressed under the most applicable provision. *See Conyers v. Abitz*, 416 F.3d 580, 586 (7th Cir. 2005).

Based on this screening, the complaint must be **dismissed**. Ferrell brings his claims pursuant to 42 U.S.C. § 1983, and alleges that he has not received appropriate treatment for his serious mental illness in violation of the Eighth Amendment and that he is being placed in a special needs unit that only exacerbates his mental illness. But he does not allege who is directly responsible for the alleged constitutional deprivations. Without an allegation of the person or persons directly responsible for the denials, the complaint fails to state a claim upon which relief can be granted. *Munson v. Gaetz*, 673 F.3d 630, 637 (7th Cir. 2012) (section 1983 liability requires

a defendant's personal involvement in the alleged constitutional violation); *Burks v. Raemisch*, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Section 1983 does not establish a system of vicarious responsibility. Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise. . . . *Monell*'s rule [is that] that public employees are responsible for their own misdeeds but not for anyone else's.") (citing *Monell v. New York City Dep't of Social Services*, 436 U.S. 658 (1978)). Ferrell names the Commissioner Indiana Department of Correction and Superintendent Dick Brown in the caption but does not reference actions on the part of the Commissioner or the Superintendent in the body of the complaint. He has therefore failed to state a claim against either defendant. See *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) ("Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.").

III

The dismissal of the complaint will not yet lead to the dismissal of the action. Instead, Ferrell shall have **through February 28, 2017**, in which **to file an amended complaint**.

In filing an amended complaint, Ferrell shall conform to the following guidelines: (a) the amended complaint shall comply with the requirement of Rule 8(a)(2) of the *Federal Rules of Civil Procedure* that pleadings contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . .," which is sufficient to provide the defendant with "fair notice" of the claim and its basis. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and quoting Fed. R. Civ. P. 8(a)(2)); (b) the amended complaint must include a demand for the relief sought; (c) the amended complaint must identify what legal injury they claim to have suffered and what persons are responsible for each such legal

injury; and (d) the amended complaint must include the case number referenced in the caption of this Entry. The plaintiff is further notified that “[u]nrelated claims against different defendants belong in different suits.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

In organizing his complaint, Ferrell may benefit from utilizing the Court’s complaint form. The **clerk is directed** to include a copy of the prisoner civil rights complaint form along with the plaintiff’s copy of this Entry.

If an amended complaint is filed as directed above, it will be screened. If no amended complaint is filed, this action will be dismissed for the reasons set forth above.

IT IS SO ORDERED.

Date: 1/31/17

William T. Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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