

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON

CIVIL ACTION NO. 09-26-JBC

JAMES V. GAY and  
EARL GAY,

PLAINTIFFS,

V. MEMORANDUM OPINION AND ORDER

TEDDY E. MARTIN and  
MONTGOMERY CO. SHERIFF'S OFFICE,

DEFENDANTS.

\* \* \* \* \*

This matter is before the court on the motion of Defendant Fred Shortridge, in his official capacity as Montgomery County Sheriff, to dismiss the amended complaint because it fails to state a claim for which relief may be granted. R. 22; *see also* Fed. R. Civ. P. 12(b)(6). For the following reasons, the court will grant the motion.

The court previously ordered the plaintiffs, James Gay and Earl Gay, to amend their complaint in order to plead sufficient facts in support of their claim under the Equal Protection Clause. R. 13 at 5. Specifically, the Gays needed to state that "(1) the Sheriff (a state actor) (2) intentionally discriminated against them (3) because of their race (4) while treating differently white persons who made complaints similar to the ones made by the plaintiffs." *Id.* at 5-6. The amended complaint does not contain any factual allegations regarding the treatment of non-African-Americans who made complaints similar to those made by the plaintiffs, or any other proof (such as racist statements or other remarks) that the sheriff's office

intentionally discriminated against them because of their race. Although the court is bound by the factual allegations in the complaint, it need not accept as true legal conclusions "couched as factual allegations." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). Because the complaint does not allege a sufficient factual basis for their equal protection claim, the Gays have failed to state a claim upon which relief can be granted.

Accordingly,

**IT IS ORDERED** that the motion to dismiss, R. 22, is **GRANTED**. The case is dismissed **WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that the matter shall be **STRICKEN** from the court's active docket.

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Signed on January 29, 2010

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*Jennifer B. Coffman*

JENNIFER B. COFFMAN, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

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