

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

JASON ONTERIA MASON

PLAINTIFF

v.

CIVIL ACTION NO. 3:12-CV-P641-H

COMMONWEALTH OF KENTUCKY *et al.*

DEFENDANTS

MEMORANDUM OPINION

Plaintiff Jason Onteria Mason filed a *pro se* complaint pursuant to 42 U.S.C. § 1983.

This matter is before the Court on initial review of the complaint pursuant to 28 U.S.C. § 1915A. *See McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997). For the reasons that follow, the complaint will be dismissed.

I. SUMMARY OF CLAIMS

Plaintiff is a pretrial detainee incarcerated at the Louisville Metro Department of Corrections (LMDC). He brings suit against the Commonwealth of Kentucky, the Commonwealth's Attorney, Jefferson District Court Judge Sean Delahanty,¹ and LMDC Director Mark Bolton. He sues all Defendants in their official capacities.

In the complaint, Plaintiff raises several claims. First, he alleges that the Commonwealth of Kentucky and Judge Delahanty "remanded my natural liberty my persona to Mark Bolton of LMDC on September 6 2012 I am not a citizen of Kentucky." He claims that the Commonwealth of Kentucky does not have jurisdiction of his "persona" and that Mark Bolton illegally detained him.

¹In the parties' section of the complaint, Plaintiff states that Delahanty is employed as "mag." It is unclear what this means, but the Court takes judicial notice that Sean Delahanty is a Jefferson District Court Judge.

Second, Plaintiff alleges that he did not consent to the breathalyser test on August 25, 2012, and that the Commonwealth of Kentucky charged him with “D.U.I. 4th” due to his non-consent.

Third, Plaintiff alleges that on or about September 26, 2012, Mark Bolton violated his rights. He reports that “My family mailed me legal mail printed from the internet/computer that relates to my complaint.” He states that the mail was marked “legal mail” but that the LMDC mailed the information back to his family stating that he could not receive printed legal mail from the computer and that an attorney would have to send him his legal mail. He states that he filed a grievance but was told the issue was not grievable.

Fourth, Plaintiff reports that on September 26, 27, and 28, 2012, he was denied access to the law kiosk to research information needed to properly pursue civil due process and to obtain “filing-procedure-process of federal court and Federal Laws.”

Finally, Plaintiff alleges that on September 27, he filed an action request for copies of his civil federal lawsuit but was not allowed copies.

As relief, Plaintiff seeks monetary and punitive damages and release from the LMDC.

II. STANDARD OF REVIEW

Because Plaintiff is a prisoner seeking relief against governmental entities, officers, and/or employees, this Court must review the instant action under 28 U.S.C. § 1915A. Under § 1915A, the trial court must review the complaint and dismiss the complaint, or any portion of the complaint, if the court determines that it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* § 1915A(b)(1), (2); *McGore*, 114 F.3d at 604.

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The trial court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327.

In order to survive dismissal for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “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.” *Id.* (citing *Twombly*, 550 U.S. at 556). “[A] district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) (citations omitted)). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555, 557).

Although courts are to hold *pro se* pleadings “to less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519 (1972), this duty to be less stringent “does not require us to conjure up unpled allegations,” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979), or to create a claim for a plaintiff. *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975). To command otherwise would require courts “to explore exhaustively all potential claims of a *pro se* plaintiff, [and] would also transform the district

court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

III. ANALYSIS

“Section 1983 creates no substantive rights, but merely provides remedies for deprivations of rights established elsewhere.” *Flint ex rel. Flint v. Ky. Dep’t of Corr.*, 270 F.3d 340, 351 (6th Cir. 2001). Two elements are required to state a claim under § 1983. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). “[A] plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). “Absent either element, a section 1983 claim will not lie.” *Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

A. Injunctive Relief

Plaintiff alleges that he has been illegally detained and asks to be released from the LMDC. “[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.”² *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Because Plaintiff is seeking immediate release from detention, the § 1983 claim cannot lie.

²A habeas action under 28 U.S.C. § 2241 applies pre-judgment, while a habeas action under 28 U.S.C. § 2254 applies post-judgment. See *Klein v. Leis*, 548 F.3d 425, 431 n.4 (6th Cir. 2008) (“Because § 2254 applies to those held ‘pursuant to the judgment of a State court . . .’ 28 U.S.C. § 2254(b)(1), a pretrial detainee ordinarily pursues habeas relief under § 2241.”) (emphasis omitted).

B. Commonwealth of Kentucky

The Court will dismiss the claims against the Commonwealth of Kentucky on two bases. First, a state is not a “person” subject to suit under § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). Second, the Eleventh Amendment³ bars the claims. A state may not be sued in federal court, regardless of the relief sought, unless the state has waived its sovereign immunity under the Eleventh Amendment or Congress has overridden it. *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). The Commonwealth of Kentucky has not waived its immunity, *see Adams v. Morris*, 90 F. App’x 856, 857 (6th Cir. 2004), and in enacting § 1983, Congress did not intend to override the traditional sovereign immunity of the states. *Whittington v. Milby*, 928 F.2d 188, 193-94 (6th Cir. 1991) (citing *Quern v. Jordan*, 440 U.S. 332, 341 (1979)).

C. Commonwealth’s Attorney and Judge Delahanty

Defendants, as state officials sued in their official capacities for damages, are absolutely immune from liability under the Eleventh Amendment to the United States Constitution. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985) (“This [Eleventh Amendment] bar remains in effect when State officials are sued for damages in their official capacity.”); *Boone v. Kentucky*,

³The Eleventh Amendment to the United States Constitution provides: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” Although the Eleventh Amendment does not address the situation where a state’s own citizen initiates suit against it, case law has interpreted the amendment to foreclose that possibility. *Barton v. Summers*, 293 F.3d 944, 948 (6th Cir. 2002) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)).

72 F. App'x 306, 307 (6th Cir. 2003) (“Boone’s request for monetary relief against the prosecutors in their official capacities is deemed to be a suit against the state and also barred by the Eleventh Amendment.”); *Bennett v. Thorburn*, No. 86-1307, 1988 WL 27524, at *1 (6th Cir. Mar. 31, 1988) (concluding that an official capacity suit against a judge who presided over state court litigation was barred by the Eleventh Amendment); *CH, ex rel. Watkins v. Dvorak*, No. 3:08cv0379-AS-CAN, 2009 WL 500532, at *3 (N.D. Ind. Feb. 27, 2009) (finding Indiana prosecutors entitled to Eleventh Amendment immunity).

Further, neither Defendant sued in his or her official capacity for damages is a “person” subject to suit under § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. at 71 (concluding that a state, its agencies, and its officials sued in their official capacities for monetary damages are not considered persons for the purpose of a § 1983 claim); *Matthews v. Jones*, 35 F.3d at 1049 (same).

Consequently, the § 1983 official-capacity claims for damages against the Commonwealth’s Attorney and Judge Delahanty in their official capacities for damages must be dismissed.

D. Mark Bolton

“Official-capacity suits . . . ‘generally represent [] another way of pleading an action against an entity of which an officer is an agent.’” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (quoting *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 n.55 (1978)). Plaintiff’s official-capacity claims against Defendant Bolton, therefore, are actually against Louisville Metro Government. *See Lambert v. Hartman*, 517 F.3d 433, 440 (6th Cir. 2008) (stating that civil rights suit against county clerk of courts in his official capacity was equivalent of suing clerk’s employer, the county).

When a § 1983 claim is made against a municipality, this Court must analyze two distinct issues: (1) whether Plaintiff's harm was caused by a constitutional violation; and (2) if so, whether the municipality is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992). “[A] municipality cannot be held liable *solely* because it employs a tortfeasor -- or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell*, 436 U.S. at 691; *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994); *Berry v. City of Detroit*, 25 F.3d 1342, 1345 (6th Cir. 1994). “[T]he touchstone of ‘official policy’ is designed ‘to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 138 (1988) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479-80 (1986)) (emphasis in original). To demonstrate municipal liability, a plaintiff “must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy.” *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep’t*, 8 F.3d 358, 364 (6th Cir. 1993)).

In the instant case, Plaintiff fails to allege a county policy or custom related to his illegal detention, the denial of his request to use the law kiosk, and the denial of his request for copies. The complaint, therefore, fails to establish a basis of liability against the Louisville Metro Government with respect to these claims, and these official-capacity claims against Defendant Bolton must be dismissed.

For initial review purposes, Plaintiff has sufficiently alleged a policy that inmates cannot receive computer print out information and that “legal mail” must be sent from an attorney. However, the alleged wrongdoing—that his purported “legal mail” was returned to his

family—fails to rise to the level of a constitutional violation as it occurred on only one occasion. *See, e.g., Okoro v. Scibana*, 63 F. App'x 182, 184 (6th Cir. 2003) (“Such a random and isolated incident [of mail interference] is insufficient to establish a constitutional violation.”); *Sallier v. Brooks*, 343 F.3d 868, 874 (6th Cir. 2003) (“Not all mail that a prisoner receives from a legal source will implicate constitutionally protected legal mail rights.”); *Rinehart v. Beck*, No. 5:09-CT-3019-D, 2011 WL 52360, at *5 (E.D.N.C. Jan. 5, 2011) (“Isolated incidents of mail mishandling do not rise to the level of a constitutional violation.”); *Pearson v. Simms*, 345 F. Supp. 2d 515, 519 (D. Md. 2003) (“[O]ccasional incidents of delay or non-delivery of mail do not rise to a constitutional level.”).

For these reasons, the official-capacity claims against Defendant Bolton must be dismissed.

The Court will enter a separate Order dismissing this action.

Date:

cc: Plaintiff, *pro se*
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