

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

RONALD C. DANIELS,

Plaintiff,

v.

Civil Action No. 3:17-cv-P773-DJH

ERIC PROCTOR

Defendant.

* * * * *

MEMORANDUM OPINION

This is a *pro se* civil rights action brought by a convicted prisoner pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff Ronald C. Daniels leave to proceed *in forma pauperis*. This matter is before the Court for screening pursuant to 28 U.S.C. § 1915A. For the reasons set forth below, the action will be dismissed.

I. SUMMARY OF COMPLAINT

Plaintiff brings this action against Eric Proctor, his public defender, in his individual capacity. In the complaint, Plaintiff writes as follows:

I . . . was charge with Escape II, Jan. 27, 2017. Mr. Eric Proctor Public Defender was assigned my case No # 17CR0823 on or about July 11 or 12 this yr. my court date. Mr. Proctor didn't have a travel voucher for me for court. I was doing time at the Rodoer Correctional Complex at Lagrange R.C.C. A warrant was issued for my arrest for fail to comply with court monitoring. . . . I book an plea agreement on Escape II 3yrs: 15%. I was informed by Mr. Proctor he would put me in for shock probation, he never did. I cont. too call Mr. Proctor . . . several times, left countless voice-mails. No visit whatsoever not even a letter. I suffer from PTSD, cancer, diabetic, Hep "C", liver disease, kidney problems. V.A. has medical records of conditions Mr. Proctor was aware of this, that's why it was important for me to try and get "shock probation" due to medical issues. Finally, I submitted the motion myself called Mr. Proctor again, again no reply. Dec. 4 denied me "shock probation" by mail Judge Audra J. Eckerle. I was not present. Mr. Proctor was not there either. I feel that he should have been there to argue my medical conditions on my behalf. . . . He never complied with my wishes as my Attorney of Record. Now I have to sit here at L.M.D.C. without proper medical treatments I need, plus I'm now homeless as well. Mr. Proctor did not represent me well at all. Clearly My rights have been violated.

As relief, Plaintiff seeks compensatory and punitive damages.

II. LEGAL STANDARD

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 v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). 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] 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] *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). However, while liberal, this standard of review does require more than the bare assertion of legal conclusions. *See Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995). The Court’s duty “does not require [it] to conjure up unpled allegations,” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979), or to create a claim for Plaintiff. *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975). To command otherwise would require the Court “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 (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).

Here, Plaintiff’s complaint must be dismissed because it is firmly established that a public defender does not act under color of state law for purposes of § 1983 “while performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981); *see also Otworth v. Vanderploeg*, 61 F. App’x 163, 165 (6th Cir. 2003) (“[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor under color of state law within the meaning of § 1983.”). This is true even when a criminal defense attorney’s defective performance results in the unconstitutional deprivation of an accused criminal defendant’s liberty. *See Briscoe v. Lahue*, 460 U.S. 325, 329, n.6 (1983); *Floyd v. Cty. of Kent*, 454 F. App’x 493, 497 (6th Cir. 2012) (holding public defender not liable for ineffective assistance of counsel under § 1983); Thus, even if though

Plaintiff believes his counsel was ineffective during his criminal proceeding, he has no cognizable claim against Defendant Proctor under § 1983.

IV. CONCLUSION

For the foregoing reasons, the Court will dismiss this action. The Court will enter a separate Order of dismissal consistent with this Memorandum Opinion.

Date: February 13, 2018

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court.

**David J. Hale, Judge
United States District Court**

cc: Plaintiff, *pro se*
Defendant
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