

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

RANCE LEON COX

PLAINTIFF

v.

CIVIL ACTION NO. 3:18-CV-P147-JHM

DANNY ALLEN et al.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This is a pro se civil rights action brought by a pretrial detainee pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff Rance Leon Cox 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 Court will dismiss Plaintiff's claims, but allow him an opportunity to amend his complaint.

I. SUMMARY OF COMPLAINT

Plaintiff is a pretrial detainee at Hardin County Detention Center (HCDC). He brings this action against two HCDC officials in their official capacities only – Jailer Danny Allen and “Lt. Reynolds.”

In the complaint, Plaintiff alleges that on February 26, 2018, he was attacked by a “state inmate. . . over a roll of toilet tissue” in his protective custody cell. Plaintiff states that he was “beaten in head, hit in the face, slammed to the ground and kicked!” Plaintiff alleges that Defendant Reynolds took photos of “[Plaintiff]’s torn shirt, back, right side of face, and [the other inmate]’s fingernail he lost while beaten [Plaintiff] during the assault.” Plaintiff then writes: “I believe I was not protected in seg. by HCDC in anyway at all!” He concludes: “I did nothing to provoke this assault! I am an old man and will never feel safe anywhere! I should never have been placed in harm’s way while in seg. on P/C during my 1 hour out a day!! Please send Hardin County a message and find them at fault for letting me get assaulted!”

As relief, Plaintiff seeks compensatory and punitive damages, and that the charges pending against him be “dropped.”

II. LEGAL STANDARD

When a prisoner initiates a civil action seeking redress from a governmental entity, officer, or employee, the trial court must review the complaint and dismiss the complaint, or any portion of it, if the court determines that the complaint 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 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)). “But the district court need not accept a ‘bare assertion of legal conclusions.’” *Tackett*, 561 F.3d at 488 (quoting *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995)). “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 this Court recognizes that pro se pleadings are to be held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991), “[o]ur duty to be ‘less stringent’ with pro se complaints does not require us to conjure up unpled allegations.” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979) (citation omitted). And this Court is not required 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).

A. Official-Capacity Claims

Plaintiff sues both Defendants in their official capacities only. “[O]fficial-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. New*

York City Dep't of Soc. Servs., 436 U.S. 658, 691 n.55 (1978)). Thus, Plaintiff's official-capacity claims against Defendants are actually against their employer, which is Hardin County. See, e.g., *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). The Court will first address the second issue, i.e., whether the municipality is responsible for the alleged constitutional violation.

A municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691; *Deaton v. Montgomery Cty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). 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)). The policy or custom "must be 'the moving force of the constitutional violation' in order to establish the liability of a government body under § 1983." *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (quoting *Polk Cty. v. Dodson*, 454 U.S. 312, 326 (1981) (citation omitted)).

In the instant case, Plaintiff alleges that he was attacked by another inmate. He does not allege that the attack occurred as a result of a policy or custom implemented or endorsed by Hardin County. Indeed, the complaint alleges an isolated occurrence affecting only Plaintiff.

See *Fox v. Van Oosterum*, 176 F.3d 342, 348 (6th Cir. 1999) (“No evidence indicates that this was anything more than a one-time, isolated event for which the county is not responsible.”).

Accordingly, the Court will dismiss Plaintiff’s official-capacity claims against Defendants for failure to state a claim upon which relief may be granted.

B. Injunctive Relief

In addition to compensatory and punitive damages, Plaintiff seeks the “dropping [of] all charges” against him. However, this Court has no authority to interfere in state-court criminal proceedings to dismiss pending charges, except in very limited circumstances not present in the instant case. *Younger v. Harris*, 401 U.S. 37 (1971); *Cooper v. Parrish*, 203 F.3d 937, 954 (6th Cir. 2000); *Fieger v. Thomas*, 74 F.3d 740, 743 (6th Cir. 1996). Moreover, to the extent that Plaintiff’s requests release from custody, this is not an available remedy under § 1983. *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (“[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come with the literal terms of § 1983”). “[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.”¹ *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Thus, Plaintiff’s request for injunctive relief will also be dismissed for failing to state a claim upon which relief may be granted.

¹ A 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).

C. Amended Complaint

Before dismissing this action, however, the Court will allow Plaintiff an opportunity to amend his complaint to clarify whether he seeks to sue either Defendant in his individual capacity. See, e.g., *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013) (“[U]nder Rule 15(a) of the Federal Rules of Civil Procedure, a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA [Prison Litigation Reform Act].”). If Plaintiff amends his complaint to sue one or both Defendants in their individual capacities, he must describe how each Defendant was personally involved in the alleged violation of his constitutional rights. In other words, Plaintiff must explain how each Defendant allegedly failed to protect him from attack by the other inmate.

IV. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff’s official-capacity claims against Defendants Allen and Reynolds and his claim for injunctive relief are **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted.

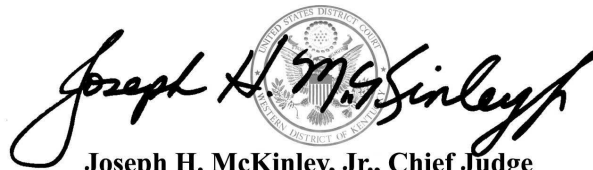
IT IS FURTHER ORDERED that within 30 days from the entry date of this Memorandum Opinion and Order, Plaintiff may file an amended complaint which indicates that he is suing Defendants Allen and/or Reynolds in their individual capacities and describes how each Defendant was personally involved in the alleged failure to protect Plaintiff from attack by another inmate.

The Court will conduct an initial review of Plaintiff’s amended complaint pursuant to

§ 1915A. **Should Plaintiff fail to file an amended complaint with the above information within the allotted amount of time, Plaintiff's complaint will be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted.**

The Clerk of Court is DIRECTED to send Plaintiff a § 1983 complaint form with this case number and the word "Amended" written in the caption.

Date: March 27, 2018



**Joseph H. McKinley, Jr., Chief Judge
United States District Court**

cc: Plaintiff, pro se
Defendants
Hardin County Attorney
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