

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

DAHVED MALIK LILLACALENIA

PLAINTIFF

v.

CIVIL ACTION NO. 3:24-cv-139-RGJ

STATE OF KENTUCKY

DEFENDANT

MEMORANDUM OPINION

Plaintiff Dhaved Malik Lillacalenia filed the instant *pro se* action. Because Plaintiff is proceeding *in forma pauperis*, the Court must screen this action pursuant to 28 U.S.C. § 1915(e)(2). For the following reasons, the action will be dismissed.

I.

Plaintiff filed the complaint on a civil complaint form. [DE 1]. He sues Defendant State of Kentucky (“Kentucky”) alleging claims for violations of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983, violations of 18 U.S.C. § 242, and a state law claim for intentional infliction of emotional distress. [*Id.* at 4]. In the “Statement of the Claim” section of the complaint form, Plaintiff alleges that Kentucky wrongly denied his request for a full pardon. [*Id.* at 5]. Plaintiff further states that “[i]ntern obstructing his being enlisted into the US Virgin Islands Military and Homeland Security[—]violation by “acting” judges of the State of KY to the Plaintiff’s Constitutional Rights as well as aiding him into gross poverty living and extreme Mental suffering with no career, but only incarcerations.” [*Id.*]. As relief, Plaintiff “seeks the amount of 10 million for infringement of rights and the State using his pass record to Destroy his Career.” [*Id.* at 6].

II.

Because Plaintiff is proceeding *in forma pauperis*, the Court must review the complaint under 28 U.S.C. § 1915(e). *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). On review, a district court must dismiss a case at any time if it determines that the action 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. 28 U.S.C. § 1915(e)(2)(B).

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 [the Court] 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).

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).

III.

A. 42 U.S.C. § 1983 Claim

Section 1983 does not create substantive rights, but merely provides “a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989). Section 1983 creates a cause of action against any person who, under color of state law, causes the deprivation of a right secured by the Constitution or the laws of the United States. A claim under § 1983 must therefore allege two elements: (1) the deprivation of federal statutory or constitutional rights by (2) a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Flint v. Ky. Dep’t of Corr.*, 270 F.3d 340, 351 (6th Cir. 2001). Absent either element, no § 1983 claim exists. *Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

In his complaint, Plaintiff sues the Commonwealth of Kentucky. A state and its agencies are not “persons” 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). Additionally, the Eleventh Amendment to the United States Constitution acts as a bar to all claims for relief against the Commonwealth of Kentucky. A state and its agencies 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)); *see also Sanderson v. Healey*, No. 3:18CV-P35-CRS, 2018 WL 3232802, at *3–4 (W.D. Ky. July 2, 2018). Thus, Plaintiff's constitutional claims against the Commonwealth of Kentucky must be dismissed for failure to state a claim upon which relief may be granted and as barred by the Eleventh Amendment.

B. 18 U.S.C. § 242

Plaintiff also alleges violations of 18 U.S.C. § 242 which is a criminal statute that does not give rise to any private civil cause of action. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (“Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.”). “Where a statute does not include this sort of explicit ‘right- or duty-creating language,’ [courts] rarely impute to Congress an intent to create a private right of action.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002); *see also, e.g., United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003) (holding that plaintiff had no private right of action under either criminal statute 18 U.S.C. §§ 241 or 242).

To the extent Plaintiff's citation of this criminal statute might be read to seek the initiation of criminal charges, the “[a]uthority to initiate a criminal complaint rests exclusively with state and federal prosecutors[.]” *Sahagian v. Dickey*, 646 F. Supp. 1502, 1506 (W.D. Wis. 1986); *United States v. Nixon*, 418 U.S. 683, 693 (1974) (“[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case[.]”); *Williams v. Luttrell*, 99 F. App'x 705, 707 (6th Cir. 2004) (“[A]s a private citizen, Williams has no authority to initiate a federal

criminal prosecution of the defendants for their alleged unlawful acts.”). Consequently, Plaintiff’s claims based on this statute will be dismissed for failure to state a claim.

C. State-law Claim

Because Plaintiff’s federal claims are being dismissed, the Court declines to exercise supplemental jurisdiction over Plaintiff’s state-law intentional infliction of emotion distress claim. *See* 28 U.S.C. § 1367(c)(3); *see also United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). The state-law claim will be dismissed without prejudice.


D. Remaining Motions

Because this action is being dismissed, Plaintiff’s remaining motions [DE 4, DE 7] will be denied as moot.

IV.

Accordingly, the Court will dismiss this action by separate Order.

Date: May 1, 2024



Rebecca Grady Jennings, District Judge
United States District Court

cc: Plaintiff, *pro se*
Defendants
A961.014