

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO  
CIVIL ACTION NO. 4:13CV-P69-M**

**DARRYL LEFENNUS ROBINSON**

**PLAINTIFF**

**v.**

**TERRY ELDER *et al.***

**DEFENDANTS**

**MEMORANDUM OPINION**

Plaintiff Darryl Lefennus Robinson filed the instant *pro se* 42 U.S.C. § 1983 action proceeding *in forma pauperis*. This matter is before the Court on initial review pursuant to 28 U.S.C. § 1915A. Upon review, the Court will dismiss the action.

**I.**

Plaintiff is a convicted inmate incarcerated at the Webster County Detention Center (WCDC). He sues LaDonna Thompson, Commissioner of the Kentucky Department of Corrections (KDOC); Terry Elder, the WCDC Jailer; and Tim Vaughn, a WCDC captain. He sues each Defendant in his or her official and individual capacities.

Plaintiff states he is a “parole violater but currently going to court on pending cases in Jefferson County Circuit Court.” He avers that when he arrived at WCDC on March 12, 2013, he asked Defendant Vaughn if there was a law library and that Vaughn said no. Plaintiff reports that he filed a grievance with Defendant Elder who responded that they are not required by the KDOC to have law books or a law library while housing KDOC inmates. Plaintiff further states, “I also was told that we can be housed up to 2 years as a control intake inmate.” He reports that he has sent copies of grievances and family members have made phone calls to the KDOC about the matter. Plaintiff contends that this is a violation of his Sixth Amendment rights. He states,

“I have no way to research my case or properly file needed motions that is necessary for me to understand the laws and constitutional rights that I may or may not have in or during my trial procedure.” As relief, he seeks compensatory and punitive damages and requests to be sent to the Roederer Correctional Complex.

## II.

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)).

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.**

#### **A. Access to legal materials**

Plaintiff contends that Defendants have denied his right to access a law library and legal materials. Prisoners have a constitutional right of access to the courts under the First Amendment. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). However, the right of access to the courts has never been equated with unlimited access to legal materials and assistance. *See Walker v. Mintzes*, 771 F.2d 920, 932 (6th Cir. 1985). The courts have recognized repeatedly that there is no constitutionally protected right of access to a law library. *Lewis v. Casey*, 518 U.S. 343, 350-51 (1996). In order to state a claim for interference with access to the courts, a plaintiff must show actual injury. *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999). “An inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense. That would be the

precise analog of the healthy inmate claiming constitutional violation because of the inadequacy of the prison infirmary.” *Lewis v. Casey*, 518 U.S. at 351. “‘Meaningful access to the courts is the touchstone,’ and the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *Id.* (internal citations omitted). “Examples of actual prejudice to pending or contemplated litigation include having a case dismissed, being unable to file a complaint, and missing a court-imposed deadline.” *Harbin-Bey v. Rutter*, 420 F.3d 571, 578 (6th Cir. 2005).

Furthermore, the Supreme Court has held that “the underlying cause of action . . . is an element that must be described in the complaint, just as much as allegations must describe the official acts frustrating the litigation.” *Christopher v. Harbury*, 536 U.S. 403, 415 (2002). The Court held in *Christopher* that, “[l]ike any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant.” *Id.* at 416.

In the present case, Plaintiff fails to allege actual prejudice to his pending criminal action or state how his case was hindered. *See Lewis v. Casey*, 518 U.S. at 351. Accordingly, Plaintiff’s claim that he was denied access to legal materials fails to state a constitutional violation, and this claim will be dismissed for failure to state a claim upon which relief may be granted.

#### **B. Incarceration in a county facility**

To the extent that Plaintiff may also be asserting a separate claim because he is being housed in a county facility as a state inmate, the Court will address that claim. While state law may dictate the duration and circumstances under which a convicted inmate can be held in a

county facility, an inmate does not enjoy a constitutional right to be housed in any particular facility. *See Harbin-Bey v. Rutter*, 420 F.3d at 576; *Biliski v. Harborth*, 55 F.3d 160, 162 (5th Cir. 1995) (per curiam) (rejecting claim that being held in county facility was more disagreeable than if plaintiff had immediately been transferred to a state facility). Therefore, Plaintiff's claim concerning his incarceration at a county facility fails to state a cognizable claim under § 1983 and will be dismissed.

### **C. Grievance handling**

Plaintiff may also be attempting to bring a claim against Defendant Elder based on the denial of his grievances. However, there is "no constitutionally protected due process interest in unfettered access to a prison grievance procedure." *Walker v. Mich. Dep't of Corr.*, 128 F. App'x 441, 445 (6th Cir. 2005). By the same token, a plaintiff cannot maintain a claim against a prison official based solely on his or her denial of the plaintiff's grievance. "The 'denial of administrative grievances or the failure to act' by prison officials does not subject supervisors to liability under § 1983." *Grinter v. Knight*, 532 F.3d 567, 576 (6th Cir. 2008) (quoting *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999)). "The mere denial of a prisoner's grievance states no claim of constitutional dimension." *Alder v. Corr. Med. Servs.*, 73 F. App'x 839, 841 (6th Cir. 2003). A plaintiff's claim is against the subjects of his grievances, not those who merely decided whether to grant or deny the grievances. *See Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir. 2006) ("Skinner's complaint regarding Wolfenbarger's denial of Skinner's grievance appeal, it is clear, fails to state a claim."); *Lee v. Mich. Parole Bd.*, 104 F. App'x 490, 493 (6th Cir. 2004) ("Section 1983 liability may not be imposed simply because a defendant denied an administrative grievance or failed to act based upon information contained in a grievance."); *Nwaebo v. Hawk-Sawyer*, 83 F. App'x 85, 86 (6th Cir. 2003) (same); *Simpson v. Overton*, 79 F.

App'x 117, 120 (6th Cir. 2003) (“[T]he denial of an appeal cannot in itself constitute sufficient personal involvement to state a claim for a constitutional violation.”); *Martin v. Harvey*, 14 F. App'x 307, 309 (6th Cir. 2001) (“The denial of the grievance is not the same as the denial of a request to receive medical care.”). Thus, where the only allegation against a defendant relates to the denial of a grievance, a plaintiff fails to allege any personal involvement by the defendant in the alleged constitutional violation. *Id.*

Therefore, Plaintiff's claim against Defendant Elder based on his denial of his grievances will be dismissed for failure to state a claim upon which relief may be granted.

#### IV.

For the reasons stated above, the Court will enter a separate Order dismissing the action.

Date: November 14, 2013

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

cc: Plaintiff, *pro se*  
Defendants  
4414.010