

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

JEREMY SCOTT SMITH

PLAINTIFF

v.

CIVIL ACTION NO. 4:16CV-P50-JHM

DAVIESS COUNTY DETENTION CENTER

DEFENDANT

MEMORANDUM OPINION

This matter is before the Court on initial review of Plaintiff Jeremy Scott Smith's pro se complaint pursuant to 28 U.S.C. § 1915A. For the reasons that follow, the Court will dismiss the instant action.

I. SUMMARY OF CLAIMS

At the time Plaintiff filed his complaint, he was a convicted prisoner incarcerated at the Daviess County Detention Center (DCDC). He has recently notified the Court that he is now at Dismas Charities.

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against DCDC. He claims, "One of my civil rights is too have access to a Law Library so I can study my case. Now I feel I was pressured into taking time because I don't /didn't know the extent of my case." He further claims, "This place has an Kiosk system on which I had to type everything and these are the dates I had been asking for assistance pending my case," and he lists the following dates:

1-26-2016 (Inmate services)
2-15-2016 (civil rights issue)
2-25-2016 (civil rights issue)
3-2-2016 (civil rights issue)
3-4-2016 (civil rights issue)
3-10-2016 (Inmate services)
3-15-2016 (civil rights issue)
4-5-16 (Housing Assignments)

He states, “These are past dates and I have had to take time and I feel it ruined my life because of the facility’s inability to provide me with Law Library.”

As relief, Plaintiff seeks compensatory and punitive damages and injunctive relief in the form of being shipped “to another facility Due to Conflict with this facility over this matter.”

II. STANDARD OF REVIEW

Because Plaintiff is a prisoner seeking relief against governmental entities, officers, and/or employees, the Court must review the complaint 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).

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

As an initial matter, the Court advises that the DCDC is not an entity subject to suit under § 1983. *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). Rather, the claims against the DCDC actually are against Daviess County as the real party in interest. *Id.* (“Since the Police Department is not an entity which may be sued, Jefferson County is the proper party to address the allegations of Matthews’s complaint.”); see also *Blay v. Daviess Cty. Det. Ctr.*, 4:07CV-P69-M, 2007 WL 2809765, at *1 (W.D. Ky. Sept. 25, 2007); *Fambrough v. Vaught*, 4:06CV-P130-

M, 2007 WL 891866, at *1 (W.D. Ky. Mar. 21, 2007) (“[T]he claims against the detention center are also against [the County] as the real party in interest.”); *Smallwood v. Jefferson Cty. Gov’t*, 743 F. Supp. 502, 503 (W.D. Ky. 1990) (suit against fiscal court is actually suit against county itself).

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). Here, Plaintiff fails to state a constitutional violation.

Prisoners have a constitutional right of meaningful access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). Meaningful access will vary with the circumstances, and officials are to be accorded discretion in determining how that right is to be administered. *Id.* at 830-31; *John L. v. Adams*, 969 F.2d 228, 233-34 (6th Cir. 1992). “The inquiry is [] whether law libraries or other forms of legal assistance are needed to give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.” *Bounds v. Smith*, 430 U.S. at 825.

To state a claim for a denial of access to the courts, therefore, a prisoner will have to demonstrate actual prejudice to pending litigation that challenges his conviction or conditions of confinement. *Lewis v. Casey*, 518 U.S. 343, 355 (1996). That is, there must be an actual injury, and no actual injury occurs without a showing that such a claim “has been lost or rejected, or that the presentation of such a claim is currently being prevented.” *Id.* at 356; see also *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (stating that an inmate must show, “for example, that the inadequacy of the prison law library or the available legal assistance caused such actual

injury as the late filing of a court document or the dismissal of an otherwise meritorious claim”). In addition, “only prisoners with non-frivolous underlying claims can have standing to litigate an access-to-courts action.” *Hadix v. Johnson*, 182 F.3d 400, 405 (6th Cir. 1999) (citing *Lewis v. Casey*, 518 U.S. at 353 & n.3).

“[T]he underlying cause of action, whether anticipated or lost, 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). “Like 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. “Essentially, a claim for denial of access to the courts has unique pleading requirements: a plaintiff must plead a case within a case, alleging the law and facts sufficient to establish both the interference with his access to the courts, and the non-frivolous nature of the claim that was lost.” *Brown v. Matauszak*, 415 F. App’x 608, 612 (6th Cir. 2011).

In this case, Plaintiff fails to sufficiently plead a denial-of-access-to-courts claim. He mentions only “my case” and fails to provide facts to give context to the underlying claim and the denied remedy. In Plaintiff indicating that he feels he was “pressured into taking time because I don’t/didn’t know the extent of my case,” the Court believes he could be referring to a criminal case. On the other hand, the dates he alleges he “had been asking for assistance pending my case” were for “civil rights” issues; “Inmate services” issues; and a “Housing Assignments” issue. These issues are not criminal in nature. For these reasons, the Court finds that Plaintiff has failed to give fair notice to Defendant as to what his claim is and, thus, concludes that Plaintiff has failed to present a viable constitutional claim of denied access to courts.

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

Date: October 17, 2016


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

cc: Plaintiff, pro se
Daviess County Attorney
4414.005