

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

CODY RYAN MILLAY

PLAINTIFF

v.

CIVIL ACTION NO. 4:21-CV-P116-JHM

LEIGH WIGGINS

DEFENDANT

MEMORANDUM OPINION

This is a *pro se* civil-rights action brought by a convicted prisoner pursuant to 42 U.S.C. § 1983. 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 this action.

I.

Plaintiff Cody Ryan Millay is incarcerated at the Daviess County Detention Center (DCDC). He sues DCDC “S.A.P. Director”¹ Leigh Wiggins in both her official and individual capacities.

Plaintiff alleges that during a S.A.P. class at DCDC, Defendant Wiggins wrote “saggin” on the board and said, “What is saggin spelled backwards? its niggas because saggin is for niggas.” Plaintiff indicates that a result of this incident, he “signed out” of S.A.P. Plaintiff alleges that when he reported this incident to a DCDC official, the official apologized for Defendant Wiggins’ conduct. Plaintiff states that he is suing for “racial profiling, discrimination, abuse of power, and having to do more time because I can do S.A.P. now.”

As relief, he seeks damages and release on parole.

¹ The Court understands “S.A.P.” to be an acronym for “Substance Abuse Program.”

II.

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 and *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). 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 at 608.

“[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 (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 Natural 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 a 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.

“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).

Although unprofessional and deplorable, Defendant Wiggins’ alleged use of a racial slur on one occasion fails to give rise to a constitutional claim. *See, e.g., Jones Bey v. Johnson*, 248 F. App’x 675, 677-78 (6th Cir. 2007) (holding state prison guard’s use of racial slurs and derogatory language does not rise to the level of an Eighth Amendment violation); *King v. City of Eastpointe*, 86 F. App’x 790, 814 (6th Cir. 2003) (Moore, J., concurring in part and dissenting in part) (“The use of a racial epithet by itself is not an actionable violation of the Equal Protection Clause.”); *Jones v. Porter*, No. 99-1326, 2000 U.S. App. LEXIS 8929, at *6 (6th Cir. May 1, 2000) (holding prison official’s use of racial slur does not give rise to a Fourteenth Amendment equal-protection claim); *DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir. 2000) (collecting cases) (holding that use of racially derogatory language, “[s]tanding alone . . . does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prisoner equal protection of the laws.”); *Williams v. Bram*, 180 F. 3d 699, 705 (5th Cir. 1999) (holding that “alleged use of the racial epithet did not amount to conduct . . . that would deny [the plaintiff] equal protection of the laws” under the Fourteenth Amendment); *Brown v. Toombs*, No. 92-1756, 1993 U.S. App. LEXIS 1400, at *2-3 (6th Cir. Jan. 21, 1993) (“Brown’s

allegation that a corrections officer used derogatory language and insulting racial epithets is insufficient to support his claim under the Eighth Amendment.”); *Green v. Dorman*, No. 2:19-cv-2968, 2019 U.S. Dist. LEXIS 118968, at *6-7 (S.D. Ohio July 17, 2019) (holding that the use of a racial slur is “insufficient to establish a violation of [the plaintiff’s] constitutional rights); *Austin v. Kutchie*, No. 2:18-cv-87, 2018 U.S. Dist. LEXIS 73399, at *3-4 (W.D. Mich. Oct. 9, 2018) (holding that plaintiff-prisoner’s allegation that he was subjected to racial slurs and taunts failed to state an Eighth or Fourteenth Amendment claim).

IV.

For the foregoing reasons, the Court will enter a separate Order dismissing this action.

Date: December 3, 2021



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

cc: Plaintiff, *pro se*
Defendant
Daviess County Attorney
4414.011