

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY PARR,

Plaintiff,

Case No. 1:10-cv-109

v.

Honorable Robert J. Jonker

PATRICIA CARUSO et al.,

Defendants.

OPINION

This is a civil rights action brought by a former state prisoner under 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed *in forma pauperis*. Under 28 U.S.C. § 1912(e)(2), the Court is required to dismiss any action brought by a plaintiff proceeding *in forma pauperis* if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, Plaintiff's action will be dismissed for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff was discharged by the Michigan Department of Corrections (MDOC) on November 19, 2009. He previously was incarcerated at the Pugsley Correctional Facility (MPF), where the actions underlying his complaint allegedly occurred. Plaintiff sues MDOC Director Patricia Caruso, MDOC Administrator Tyler Snow, MPF Acting Warden David Pratt, and Program MPF Coordinator Cindy Follen.

According to the complaint, Defendant Snow was the MDOC administrator responsible for the implementation of the Michigan Prisoner Re-Entry Initiative (MPRI) and that Defendant Follen was the coordinator of the MPRI program at MPF. Plaintiff alleges that the MPRI program receives federal financial assistance for all prisoners that parole or discharge from the MDOC. Plaintiff contends that, as a prisoner who was being discharged from his sentence, he was eligible for MPRI assistance but was denied those services. He alleges that Defendants favor prisoners who will be paroled over those who will be discharged upon completion of their sentences, ostensibly in violation of the Equal Protection Clause.

Plaintiff seeks damages for mental anguish, emotional distress, and economic losses resulting from the denial of his right to participate in MPRI.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if ““it fails to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include

more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “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.” *Ashcroft*, 129 S. Ct. at 1949. Although the plausibility standard is not equivalent to a “probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Ashcroft*, 129 S. Ct. at 1950 (quoting FED. R. CIV. P. 8(a)(2)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

A. Equal Protection

Plaintiff claims that Defendants’ failure to provide him MPRI services violated the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause commands that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S.

CONST. amend. XIV, § 1. A state practice generally will not require strict scrutiny unless it interferes with a fundamental right or discriminates against a suspect class of individuals. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976). Plaintiff does not suggest that he is a member of a suspect class, and “prisoners are not considered a suspect class for purposes of equal protection litigation.” *Jackson v. Jamrog*, 411 F.3d 615, 619 (6th Cir. 2005); *see also Wilson v. Yaklich*, 148 F.3d 596, 604 (6th Cir.1998). In addition, prisoners do not have a fundamental right to prisoner re-entry services under the Constitution.

Because neither a fundamental right nor a suspect class is at issue, the rational basis review standard applies. *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby*, 470 F.3d 286, 298 (6th Cir. 2006). “Under rational basis scrutiny, government action amounts to a constitutional violation only if it ‘is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government’s actions were irrational.’” *Id.* (quoting *Warren v. City of Athens*, 411 F.3d 697, 710 (6th Cir. 2005)). To prove his equal protection claim, Plaintiff must demonstrate “intentional and arbitrary discrimination” by the state; that is, he must demonstrate that he “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Here, Plaintiff alleges only that he was treated differently than prisoners who were being paroled. Assuming that Plaintiff is correct that Defendants acted purposefully in depriving him of MPRI services and favoring parolees, he fails to identify a class of prisoners who were similarly situated but treated differently. Parolees are not similarly situated to persons being discharged at the end of their sentences. Given limited resources to provide MPRI programming and

outreach services, the MDOC rationally could decide to give priority to parolees, whose overall success in the MPRI program and on parole would be supervised and monitored by MDOC parole officers. Those discharged at the end of their sentences, in contrast, would not be subject to the supervision requirements of parole. As a result, parolees reasonably could be seen to have a higher potential to benefit from the MPRI services. In light of the obvious legitimate purpose supporting a different treatment of parolees, Plaintiff fails to state an equal protection claim.

B. Due Process

Arguably, Plaintiff's complaint could be read to allege that he was deprived of a liberty or property interest in MPRI services without due process of law. According to the complaint, the MPRI is a rehabilitative re-entry program run by the MDOC. Plaintiff does not have a federally cognizable liberty or property interest in participating in state-created rehabilitative programs. Federal courts consistently have found that prisoners have no constitutionally protected interest in prison vocational, rehabilitation, and educational programs based on the Fourteenth Amendment. *See, e.g., Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976) (Due Process Clause not implicated by prisoner classification and eligibility for rehabilitative programs, even where inmate suffers "grievous loss"); *Murdock v. Washington*, 193 F.3d 510, 513 (7th Cir. 1999) (no liberty or property interest in a rehabilitative program); *Sykes v. Carl Perkins Rehabilitation Center*, No. 96-5837, 1997 WL 572893, at *1 (6th Cir. Sept. 1, 1997) (no liberty or property interest in federally funded prisoner rehabilitation program); *Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989) (no constitutional right to prison employment); *Ivey v. Wilson*, 832 F.2d 950, 955 (6th Cir. 1987) ("[N]o prisoner has a constitutional right to a particular job or to any job"); *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996) (participation in a rehabilitative program is a privilege that the Due

Process Clause does not guarantee); *Rizzo v. Dawson*, 778 F.2d 527, 531 (9th Cir. 1985) (no constitutional right to rehabilitative services); *Carter v. Morgan*, No. 97-5580, 1998 WL 69810, at *2 (6th Cir. Feb. 10, 1998) (no constitutional right to educational classes); *Tribell v. Mills*, No. 93-5399, 1994 WL 236499, at *1 (6th Cir. June 1, 1994) (“[N]o constitutional right to vocational or educational programs”). Under these authorities, Plaintiff has no due process claim arising from Defendants’ decision to deny him MPRI services.

Conclusion

Having conducted the review now required by the Prison Litigation Reform Act, the Court determines that Plaintiff’s action will be dismissed for failure to state a claim under 28 U.S.C. § 1915(e)(2).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the \$455.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$455.00 appellate filing fee in one lump sum.

A Judgment consistent with this Opinion will be entered.

Dated: February 25, 2010

/s/ Robert J. Jonker

ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE