

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

JOSEPH HOWARD DUCKWORTH,)
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Plaintiff,)
)
)
v.) No. 2:16CV2 DDN
)
)
JENNIFER RICHARDSON,)
)
)
Defendant.)

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$1.50, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b). Additionally, this action is dismissed.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “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.* at 678. Determining whether a complaint states a plausible claim for relief [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

The Complaint

Plaintiff was charged with second degree assault in March 2011. *Missouri v. Duckworth*, No. 11RL-CR00025-01 (Ralls County). He pled guilty to the crime on October 4, 2011. *Id.*

The Court appointed defendant Jennifer Richardson, a public defender, to represent him. Plaintiff says that Richardson was ineffective because she did not make the proper objections. He seeks monetary and injunctive relief.

Discussion

The complaint fails to state a claim upon which relief can be granted because “a public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). As a result, this action is dismissed without prejudice.

Moreover, claims of ineffective assistance of counsel are not cognizable in § 1983 proceedings. Such claims must be brought in a petition for writ of habeas corpus under 28 U.S.C. § 2254 after properly exhausting available state remedies.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$1.50 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his

prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 22nd day of January, 2016.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE