UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARLES C. LEWIS,	)	
	)	
Plaintiff,	)	
	)	No. 4:17-cv-885-JAR
v.	)	
	)	
KIMBERLY M. GARDNER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff Charles C. Lewis, an inmate at the St. Louis City Medium Security Institution, for leave to commence this action without prepayment of the filing fee. The motion will be granted, and plaintiff will be given the opportunity to file an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to his account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds $10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted an affidavit and an inmate account statement showing an average monthly balance of $33.02. The Court will therefore assess an initial partial filing fee of $6.60, twenty percent of plaintiff's average monthly balance.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), 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, *inter alia*, draw upon judicial experience and common sense. *Id.* at 679.

When reviewing a *pro se* complaint under § 1915(e)(2), the Court must give it the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, this does not mean that *pro se* complaints may be merely conclusory. Even *pro se* complaints are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980); *see also Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004) (federal courts are not required to "assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint"). In addition, affording a *pro se*

complaint the benefit of a liberal construction does not mean that procedural rules in ordinary civil litigation must be interpreted so as to excuse mistakes by those who proceed without counsel. *See McNeil v. U.S.*, 508 U.S. 106, 113 (1993).

The Complaint

Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 against Kimberly M. Gardner (the St. Louis Circuit Attorney), police officer Joseph Steiger, and Jeffrey Carson, whom plaintiff avers is the Superintendent of the St. Louis Medium Security Institution. Plaintiff's allegations stem from different events that occurred over a period of several months. Following is a brief summary. On February 7, 2016, "the Missouri state" improperly amended an indictment to label him as a prior and persistent offender; on April 26, 2016, Steiger and eight other officers subjected him to false arrest and an illegal search; the prosecutor presented an indictment bearing an illegible signature; his right to a speedy trial was violated; on August 18, 2016 the police department reported that he had resisted arrest, jumped from a window, and led police on a chase; the Circuit Attorney's Office had a practice of deleting information from police reports; Carson failed to provide him safety, medical care and decent living accommodations; corrections officers ridiculed and verbally abused him; he was assaulted by fellow inmates in November of 2016; and his public defender lacked experience and skill. He seeks $10,000,000 in damages.

Discussion

The complaint is defective for several reasons. Plaintiff failed to specify the capacity in which he intends to sue the defendants, he failed to allege the personal responsibility of Gardner and Carson, his claims against all defendants are stated in conclusory terms, and he includes a significant amount of extraneous information that purports to allege claims against parties not

named as defendants. In addition, plaintiff presents a case involving multiple unrelated claims against not one but three defendants. This is impermissible. Rule 20(a)(2) of the Federal Rules of Civil Procedure governs joinder of defendants, and provides as follows:

> Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.

Therefore, a plaintiff cannot join, in a single lawsuit, a multitude of claims against different defendants that are related to events arising out of different occurrences or transactions. In other words, "Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). "Unrelated claims against different defendants belong in different suits, . . . [in part] to ensure that prisoners pay the required filing fees - for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees." *Id.*

Rule 18(a) of the Federal Rules of Civil Procedure, which governs joinder of claims, provides:

> A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

Therefore, multiple claims against a single defendant are valid.

Because plaintiff is proceeding *pro se*, the Court will give him an opportunity to file an amended complaint. In so doing, plaintiff should select the transaction or occurrence he wants to pursue, and limit the facts and allegations to the defendant(s) involved therein. Plaintiff should

only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See* Fed. R. Civ. P. 20(a)(2). Alternatively, plaintiff may choose one single defendant and set forth as many claims as he has against him or her. *See* Fed. R. Civ. P. 18(a).

If plaintiff wants to pursue additional claims against additional defendants, and the claims do not arise from the same transaction or occurrence he has chosen to advance in his amended complaint, he must file each such claim as a new civil action on a separate complaint form, and either pay the filing fee or file a motion for leave to proceed *in forma pauperis*.

Plaintiff must prepare the amended complaint using a Court-provided form, and must follow Rules 8 and 10 of the Federal Rules of Civil Procedure. In the "Caption" section of the form complaint, plaintiff should write the name of the defendant(s) he wishes to sue. In the "Statement of Claim" section, plaintiff should begin by writing the defendant's name. In separate, numbered paragraphs under that name, plaintiff should: (1) set forth the factual allegations supporting his claim against that defendant; (2) state what constitutional or federal statutory right(s) that defendant violated; and (3) state whether the defendant is being sued in his/her individual capacity or official capacity.[1] If plaintiff is suing more than one defendant, he shall proceed in this manner with each one, separately writing each individual defendant's name and, under that name, in numbered paragraphs, the allegations specific to that particular defendant and the right(s) that defendant violated.

Plaintiff shall have thirty (30) days from the date of this Order to file an amended complaint. Plaintiff is warned that the filing of the amended complaint completely replaces the

[1] The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

original. Claims that are not re-alleged are deemed abandoned. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation,* 396 F.3d 922, 928 (8th Cir. 2005).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed *in forma pauperis* is **GRANTED**. (Docket No. 2).

IT IS FURTHER ORDERED that plaintiff must pay an initial filing fee of $6.60 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) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that plaintiff shall submit an amended complaint in accordance with the instructions set forth herein within thirty (30) days of the date of this Memorandum and Order.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff two blank Prisoner Civil Rights Complaint forms. Plaintiff may request additional forms as needed.

If plaintiff fails to timely comply with this Memorandum and Order, the Court may dismiss this action without prejudice and without further notice.

Dated this 11th day of May, 2017.

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE