

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RONNY LEYVA,

*Plaintiff,*

vs.

DWIGHT NEVEN, *et al.*,

*Defendants.*

2:10-cv-00084-KJD-RJJ

ORDER

This *pro se* prisoner civil rights action by an inmate in the custody of the Nevada Department of Corrections (“NDOC”) comes before the Court for initial review under 28 U.S.C. § 1915A.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

In considering whether the plaintiff has stated a claim upon which relief can be granted, all material factual allegations in the complaint are accepted as true for purposes of initial review and are to be construed in the light most favorable to the plaintiff. *See, e.g., Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions unsupported by any actual allegations of fact are not assumed to be true in reviewing the complaint. *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949-51 & 1954, 173 L.Ed.2d 868

1 (2009). That is, bare, naked and conclusory assertions that merely constitute formulaic  
2 recitations of the elements of a cause of action and that are devoid of further factual  
3 enhancement are not accepted as true and do not state a claim for relief. *Id.*

4 Allegations of a *pro se* complainant are held to less stringent standards than formal  
5 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30  
6 L.Ed.2d 652 (1972).

7 In the complaint, plaintiff Ronny Leyva alleges that High Desert State Prison (“High  
8 Desert”) prison officials wrongfully confiscated and permanently deprived him of crime scene  
9 photographs that he kept in his fire box for his legal files. He alleges that he was authorized  
10 to have the crime scene photos in his possession when he previously was incarcerated at Ely  
11 State Prison. He seeks monetary damages from, in their individual capacities, High Desert  
12 Warden Dwight Neven, NDOC Deputy Director of Operations Greg Cox, and High Desert  
13 Caseworker Roland Daniels. He alleges that each one of these officers was made aware of  
14 the deprivation through the grievance process and had the authority to return the property but  
15 chose not to do so. In four counts based upon these alleged facts, plaintiff alleges that he  
16 was deprived of his property without due process of law in violation of the Fourteenth  
17 Amendment, that he was subjected to an unreasonable seizure in violation of the Fourth  
18 Amendment, that the confiscation violated his Sixth Amendment right to assist in his defense,  
19 and that the deprivation violated a purported Eighth Amendment right to due process.

20 In Count I, plaintiff fails to state a claim under the Fourteenth Amendment for a denial  
21 of procedural due process, due to the availability of an adequate state post-deprivation  
22 remedy for the loss. *See Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct. 3194, 82 L.Ed.2d  
23 393 (1984); *Parratt v. Taylor*, 451 U.S. 527, 543, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981),  
24 *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d  
25 662 (1986); N.R.S. 73.010; N.R.S. 41.031; N.R.S. 209.243.

26 In Count II, plaintiff fails to state a claim under the Fourth Amendment for an alleged  
27 unreasonable seizure. In *Hudson*, the Supreme Court held that inmates have no expectation  
28 of privacy in their personal property in prison and that the Fourth Amendment therefore is

1 inapplicable to a search or seizure of an inmate's personal property. See 468 U.S. at 522-30,  
2 104 S.Ct. at 3198-3202. The Supreme Court made it clear that its holding that there was no  
3 Fourth Amendment protection in this context applied fully to the alleged seizure and  
4 destruction of property as well as to the search itself:

5  
6           Respondent contends also that the destruction of his  
7           personal property constituted an unreasonable seizure of that  
8           property violative of the Fourth Amendment. Assuming that the  
9           Fourth Amendment protects against the destruction of property,  
10           in addition to its mere seizure, the same reasons that lead us to  
11           conclude that the Fourth Amendment's proscription against  
12           unreasonable searches is inapplicable in a prison cell, apply with  
13           controlling force to seizures. Prison officials must be free to seize  
14           from cells any articles which, in their view, disserve legitimate  
15           institutional interests. . . .

16 468 U.S. at 528 n.8, 104 S.Ct. at 3201 n.8. The Court noted that the prisoner's remedy in that  
17 situation, just as with regard to the Fourteenth Amendment due process claim, was a state  
18 post-deprivation remedy for the alleged destruction of the property. *Id.*

19           In Count III, plaintiff fails to state a claim under the Sixth Amendment for a violation of  
20 his right to assist in his defense. Plaintiff already has been convicted, and he alleges that the  
21 crime scene photos were from files relinquished by the public defender's office. The Sixth  
22 Amendment right in question does not extend to an incarcerated convict, even one *arguendo*  
23 considering retaining counsel in order to pursue post-conviction relief.

24           In Count IV, plaintiff fails to state a claim under the Eighth Amendment for a violation  
25 of due process. Due process protections arise under the Fifth and Fourteenth Amendments  
26 rather than the Eighth Amendment. As discussed above, plaintiff fails to state a due process  
27 claim. The Eighth Amendment otherwise does not provide any applicable protection on the  
28 facts alleged.

          The complaint therefore will be dismissed for failure to state a claim upon which relief  
may be granted. The Court finds that delaying dismissal for leave to amend would be futile.

          IT THEREFORE IS ORDERED that the complaint is DISMISSED for failure to state  
a claim upon which relief may be granted.

////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The Clerk of Court shall enter final judgment accordingly in favor of defendants and against plaintiff, dismissing this action without prejudice for failure to state a claim.

DATED: November 5, 2010



---

KENT J. DAWSON  
United States District Judge