

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|----------------|---|------------------------------|
| EARL MORRISON, |) | CASE NO. 1:09 CV 2394 |
| |) | |
| Plaintiff, |) | JUDGE SOLOMON OLIVER, JR. |
| |) | |
| v. |) | |
| |) | <u>MEMORANDUM OF OPINION</u> |
| STATE OF OHIO, |) | <u>AND ORDER</u> |
| |) | |
| Defendant. |) | |

On October 15, 2009, plaintiff pro se Earl Morrison, an inmate at the Marion Correctional Institution, filed this 42 U.S.C. § 1983 action against the State of Ohio. The complaint alleges plaintiff's finger was injured while he was incarcerated at the Mansfield Correctional Institution. It is further alleged that an x-ray that was taken was misread, causing the finger to set improperly. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915A.

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A; Siller v. Dean, No. 99-5323, 2000 WL 145167 , at *2 (6th Cir. Feb. 1, 2000).

In Parratt v. Taylor, 451 U.S. 527, 535 (1981), the Supreme Court stated that "the initial inquiry [in a section 1983 action] must focus on whether the two essential elements ... are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States."

Plaintiff cannot meet the threshold requirement in Parratt, as States are not "persons" subject to suit under 42 U.S.C. § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989). Further, the conduct of which plaintiff complains amounts, at most, to negligence. It is well established that negligence cannot form the basis for a section 1983 action. Daniels v. Williams, 474 U.S. 327 (1986).

Accordingly, this action is dismissed under section 1915A. The dismissal is without prejudice to a valid state law claim plaintiff may have under the facts alleged. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

December 21, 2009