



### **Standard or Review**

Federal district courts are required under 28 U.S.C. § 1915(e)(2)(B) to screen all *in forma pauperis* actions filed in federal court, and to dismiss before service any such action that the Court determines is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6<sup>th</sup> Cir. 2010). To survive a dismissal for failure to state claim, a *pro se* complaint must set forth “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 471 (holding that the dismissal standards articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), govern dismissals for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)). The plaintiff’s “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

### **Discussion**

Upon review, the Court finds that the plaintiff’s complaint must be summarily dismissed.

The plaintiff’s allegations are purely speculative and conclusory and fail to suggest any plausible constitutional violation on the part of Sergeant Tim McCleod. *See Lillard v. Shelby Cty. Bd. of Educ.*, 76 F.3d 716, 726 (6<sup>th</sup> Cir. 1996) (a court is not required to accept summary allegations or unwarranted conclusions in determining whether a complaint states a claim for relief).

Further, the plaintiff’s claims are not cognizable under § 1983 in any case. His claims are not cognizable insofar as a ruling on them would affect the validity of his confinement unless he shows that his convictions or sentence were reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by the issuance of a writ of *habeas corpus*. *See Heck v. Humphrey*, 512 U.S. 477, 486–87(1994); *Edwards v. Balisok*, 520 U.S. 641 (1997)(claims for declaratory relief are subject to the requirements in *Heck*). Nothing in the plaintiff’s complaint suggests that the plaintiff’s Summit County convictions or his sentence have been called into question or invalidated in any of the ways articulated in *Heck*.

And to the extent the plaintiff is challenging “the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate or speedier

release from that imprisonment, his sole federal remedy is a writ of *habeas corpus*.” See *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Therefore, to the extent the plaintiff is challenging his physical imprisonment or its duration, his claims are not cognizable in a civil rights action under § 1983.

**Conclusion**

For the reasons stated above, the plaintiff’s complaint fails to state a plausible claim under § 1983 and is dismissed in accordance with 28 U.S.C. § 1915(e)(2)(B). The Court further 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/ John R. Adams  
JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE

DATED: November 15, 2019