

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DONOVAN CRAIG SIERS,	)	Civ. 14-4002-KES
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING LEAVE TO
	)	PROCEED IN FORMA PAUPERIS
STATE OF SOUTH DAKOTA; and	)	AND DISMISSING COMPLAINT
STATE OF SOUTH DAKOTA	)	
UNIFIED JUDICIAL SYSTEM,	)	
	)	
Defendants.	)	

Plaintiff, Donovan Craig Siers, is an inmate at Mike Durfee State Prison (MDSP) in Springfield, South Dakota. Siers has filed a pro se civil rights lawsuit pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dockets 1, 9.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Siers has not submitted a formal accounting of his prisoner trust account, but reports having \$78.73 in a checking or savings account. Docket 9. Siers has also paid the \$350 filing fee. Docket 11. Based on this information, the court grants Siers leave to proceed in forma pauperis.

But the inquiry does not end there. The PLRA requires the court to screen Siers's complaint to determine whether any claims should be dismissed. Pursuant to the PLRA, the court must dismiss an action or any portion thereof if the prisoner has raised a claim that "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)–(iii).

#### **STANDARD OF REVIEW**

A claim "is frivolous where it lacks an arguable basis in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous when it is "based on an indisputably meritless legal theory" or where the factual contentions "are clearly baseless." *Id.* at

327. The court may dismiss a complaint for failure to state a claim when “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957). In reviewing a complaint under this standard, “[t]he court must presume that the factual allegations in the complaint are true and accord all reasonable inferences from those facts to the [pleader].” *Valiant-Bey v. Morris*, 829 F.2d 1441, 1443 (8th Cir. 1987) (citing *Holloway v. Lockhart*, 792 F.2d 760, 762 (8th Cir. 1986)).

Pro se complaints, “ ‘however inartfully pleaded,’ [are] held to ‘less stringent standards than formal pleadings drafted by lawyers.’ ” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)); *see also Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) (noting that “civil rights pleadings should be construed liberally”).

Nonetheless, a pro se complaint must comply with the minimal requirements set forth in the Federal Rules of Civil Procedure, which specifically require pleadings to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although a pro se complaint need not contain detailed factual allegations, it must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Simply stated, a pro se complaint must “allege facts sufficient to

support the claims advanced.” *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). The court is not required to “supply additional facts, nor will [it] construct a legal theory that assumes facts that have not been pleaded.” *Id.* (citing *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989)). If the complaint does not contain these bare essentials, dismissal is appropriate. *Beavers v. Lockhart*, 755 F.2d 657, 663 (8th Cir. 1985).

### **DISCUSSION**

“[T]o state a claim for relief under § 1983, a plaintiff must allege sufficient facts to show ‘(1) that the defendant(s) acted under color of state law, and (2) that the alleged wrongful conduct deprived the plaintiff of a constitutionally protected federal right.’ ” *Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010) (quoting *Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009)). In the instant case, Siers claims that defendants have wrongfully imprisoned him in “clear violation of the United States Constitution and the South Dakota Constitution.” Docket 1 at 1. More specifically, Siers claims that he is being held for violating SDCL 32-23-10—a state law that he alleges violates Section 9 of the South Dakota Constitution and the Fourteenth Amendment of the United States Constitution. To remedy this alleged constitutional violation, Siers requests that he be released from prison.

The primary issue raised by Siers’s complaint relates to the legality of his confinement. As the United States Supreme Court has noted, “habeas

corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.” *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 488–90 (1973)). Therefore, because Siers seeks to invalidate his allegedly illegal sentence, he has failed to state a claim upon which relief may be granted pursuant to § 1983. His sole remedy is a writ of habeas corpus. Accordingly, it is

ORDERED that Siers’s motion for leave to proceed in forma pauperis (Docket 9) is granted.

IT IS FURTHER ORDERED that Siers’s complaint (Docket 1) is dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915.

Dated February 26, 2014.

BY THE COURT:

*/s/ Karen E. Schreier*

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KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE