

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

JOSHUA E. SMITH, OCA # 472023, Plaintiff, v. STATE OF TENNESSEE, METRO GENERAL SESSIONS COURT, METRO POLICE DEPARTMENT SOUTH PRECINCT, and DET. DARRY BALTIMORE, OFFICER JASON KORENER, JAVON RANSOM, Defendants.

No. 3:14-cv-02003

Judge Campbell

ORDER

Plaintiff Joshua Smith, a prisoner or pretrial detainee in the custody of the Davidson County Sheriff's Office in Nashville, Tennessee, brings this action pro se under 42 U.S.C. § 1983 and state law, alleging that he was subject to a false arrest. The plaintiff's application to proceed in forma pauperis (ECF No. 5) is presently pending. In addition, the plaintiff's complaint is before the Court for an initial review pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(e)(2).

A. The Application to Proceed as a Pauper

Because it appears from his submissions that the plaintiff lacks sufficient financial resources from which to pay the full filing fee in advance, the application (ECF No. 5) is GRANTED.

However, under § 1915(b), the plaintiff nonetheless remains responsible for paying the full filing fee. The obligation to pay the fee accrues at the time the case is filed, but the PLRA provides prisoner-plaintiffs the opportunity to make a "down payment" of a partial filing fee and to pay the remainder in installments. Accordingly, the plaintiff is hereby assessed the full \$350 filing fee, to be paid as follows:

(1) The custodian of the plaintiff's inmate trust fund account at the institution where he now resides is DIRECTED to submit to the Clerk of Court, as an initial payment, "20 percent of the greater of - (a) the average monthly deposits to the plaintiff's account; or (b) the average monthly balance in the plaintiff's account for the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(b)(1).

(2) After the initial filing fee is fully paid, the trust fund officer must withdraw from the plaintiff's account

and pay to the Clerk of this Court monthly payments equal to 20% of all deposits credited to the plaintiff's account during the preceding month, but only when the amount in the account exceeds \$10. Such payments must continue until the entire \$350 filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

(3) Each time the trust account officer makes a payment to this Court as required by this order, he must print a copy of the prisoner's account statement showing all activity in the account since the last payment made in accordance with this order and submit it to the Clerk along with the payment. All submissions to the Court must clearly identify the plaintiff's name and the case number as indicated on the first page of this order, and must be mailed to: Clerk, United States District Court, Middle District of Tennessee, 801 Broadway, Nashville, TN 37203.

The Clerk of Court is **DIRECTED** send a copy of this order to the Administrator of the Davidson County Sheriff's Office – Criminal Justice Center to ensure that the custodian of the plaintiff's inmate trust account complies with that portion of 28 U.S.C. § 1915 pertaining to the payment of the filing fee. If the plaintiff is transferred from his present place of confinement, the custodian of his inmate trust fund account **MUST** ensure that a copy of this order follows the plaintiff to his new place of confinement for continued compliance with this order.

**B. Initial Review of the Complaint**

For purposes of the initial review required by 28 U.S.C. § 1915(e)(2), the Court finds that the state of Tennessee is entitled to absolute immunity from suit under the Eleventh Amendment and that the complaint fails to state a claim for which relief may be granted against the Metro Police Department South Precinct and Metro. General Sessions Court. The claims against these defendants are therefore **DISMISSED WITH PREJUDICE**. The complaint also fails to state a claim under 42 U.S.C. § 1983 against defendant Ransom or against defendants Baltimore and Korener in their official capacity. Those claims are likewise **DISMISSED WITH PREJUDICE**.

However, the complaint states colorable claims under § 1983 and state law against Detective Baltimore and Officer Korenor in their individual capacity, under state law against Baltimore and Korener in their official capacity, and under state law against Javon Ransom. Such claims will, for purposes of the initial review, be permitted to proceed. The Court expresses no opinion as to the ultimate merit of these claims.

The Clerk is **INSTRUCTED** to send the plaintiff a service packet (a blank summons and USM 285 form) for defendants Baltimore, Korener, and Ransom. The plaintiff **MUST** complete the service packets and return them to the Clerk's Office within **30 days** of the date of receipt of this order. Upon return of the completed service packets, **PROCESS SHALL ISSUE**. The plaintiff is forewarned that the failure to return the completed service packets within the time required could jeopardize his prosecution of this action. He is also forewarned that his prosecution of this action will be jeopardized if he fails to keep the Clerk's Office informed of his current address at all times.

This action is **REFERRED** to the Magistrate Judge to enter a scheduling order for the management of the case, to dispose or recommend disposition of any pretrial motions under 28 U.S.C. §§ 636(b)(1)(A) and (B), and to conduct any other necessary proceedings under Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Court. Despite the issuance of process, the Magistrate Judge may *sua sponte* recommend the dismissal of any claim for the reasons set forth in 28 U.S.C. § 1915(e)(2).

It is so **ORDERED**.



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Todd Campbell  
United States District Judge