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AT ROANOKE, VA  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

MAURICE HAWKINS, #242361, )  
Plaintiff, )  
v. )  
RUTH HALE, )  
Defendant. )

Civil Action No. 7:05-CV- 00217

MEMORANDUM OPINION

By: Hon. Glen E. Conrad  
United States District Judge

Plaintiff Maurice Hawkins, a Virginia inmate located at Red Onion State Prison (ROSP) and proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. Hawkins claims that the state magistrate failed to prosecute correctional officers for attempted murder. This complaint is before the court pursuant to the court's screening function, as set out in 28 U.S.C. § 1915A. Because Hawkins has failed to state a claim upon which relief may be granted, the court must dismiss Hawkins's complaint, pursuant to 28 U.S.C. § 1915A(b)(1).

In his first claim, Hawkins alleges that the magistrate breached her duty by failing to enforce the law. Specifically, Hawkins alleges that the defendant failed to arrest correctional officers for attempted murder.

A "private citizen has no judicially cognizable interest in the prosecution or non-prosecution of another." Otero v. United States Attorney General, 832 F.2d 141, 141 (11th Cir. 1987) (affirming the dismissal of an action seeking the writ of mandamus to require the defendants to investigate and prosecute a former Florida State Attorney). A federal court cannot compel state prosecutors to commence a prosecution. Inmates of Attica Correctional Facility, 477 F.2d 375, 382-383 (2d Cir. 1973); accord Van Sickle v. Holloway, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986) (holding that the federal courts "have no authority to issue [a writ of mandamus]

to direct state courts or their judicial officers in the performance of their duties.” (Internal quotation marks omitted)). Therefore, Hawkins’s claim for failure to prosecute does not allege a violation of Hawkins’s constitutional rights.

In his second claim, Hawkins alleges that the failure to prosecute resulted in correctional officers retaliating against Hawkins. Hawkins alleges that he was served a dirty breakfast tray and then placed on “food loaf” for five days. Hawkins complains of stomach and back pains, emotional distress, and mental anguish.

The Eighth Amendment protects prisoners from cruel and unusual living conditions. Rhodes v. Chapman, 452 U.S. 337 (1981). On the other hand, an inmate is not entitled to relief simply because of exposure to uncomfortable, restrictive, or inconvenient conditions of confinement, for, “[t]o the extent that such conditions are restrictive or even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.” Id. at 347. In fact, to state a claim of constitutional significance regarding prison conditions, plaintiff must allege facts sufficient to show either that he has sustained a serious or significant mental or physical injury as a result of the challenged conditions or that the conditions have created an unreasonable risk of serious damage to his future health. Strickler v. Waters, 989 F.2d 1375, 1380-1381 (4th Cir. 1993); Helling v. McKinney, 509 U.S. 25 (1993). Hawkins does not allege a serious or significant mental or physical injury. In addition, the defendant cannot be held accountable for the alleged actions of correctional officers who she exerts no control over. Therefore, this claim is without merit.

Under 28 U.S.C. § 1915A(b)(1), the court may dismiss a complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted. Hawkins’s complaint does

not state a claim for which this court can grant relief. Therefore, this court must dismiss

Hawkins's complaint pursuant to 28 U.S.C. § 1915A(b)(1).

ENTER: This 13<sup>th</sup> day of April, 2005.



UNITED STATES DISTRICT JUDGE