

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

JAN 23 2001

JAMES W. McCORMACK, CLE
By:  DEP CL

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

KENNETH LEE ROYAL
ADC# 11087

PLAINTIFF

vs.

NO: 2:00CV00229 SWW

MS. DAWSON, Mail Room
Supervisor, et al.

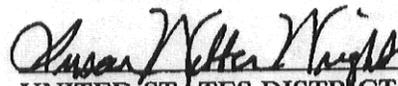
DEFENDANTS

ORDER

The Court has received proposed Findings and Recommendations from Magistrate Judge John F. Forster, Jr. After careful review of those findings and recommendations, and the timely objections received thereto, reviewed de novo, the Court concludes that the Findings and Recommendations should be, and hereby are, approved and adopted as this Court's findings in all respects in their entirety.

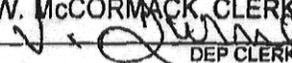
Accordingly, judgment will be entered dismissing this complaint. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal taken from this order and the judgment entered under it would be frivolous and not taken in good faith.

IT IS SO ORDERED this rd 23 day of January, 2001.


UNITED STATES DISTRICT JUDGE

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EASTERN DISTRICT ARKANSAS

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JAMES W. McCORMACK, CLERK
By:  DEP. CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

KENNETH LEE ROYAL
ADC# 11087

PLAINTIFF

vs.

NO: 2:00CV00229 SWW

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JUDGMENT

Pursuant to the Order filed in this matter this date, it is Considered, Ordered and Adjudged that this case be, and it hereby is, dismissed without prejudice; the relief sought is denied. The Court certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal taken from this judgment would be frivolous and not taken in good faith.

DATED this 23rd day of January, 2001.


UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 1-24-01 BY V

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 09 2001

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

JAMES W. McCORMACK, CLE
By:  DEP CLE

KENNETH LEE ROYAL
ADC #11087

PLAINTIFF

v. No. 2:00CV00229 JFF

MS. DAWSON, et al.

DEFENDANTS

FINDINGS AND RECOMMENDATION

Plaintiff, a state prisoner incarcerated at the East Arkansas Regional Unit of the Arkansas Department of Correction, has filed a complaint¹ pursuant to 42 U.S.C. § 1983, seeking damages against defendants as a result of alleged unconstitutional openings of his legal mail.

Pursuant to the Prison Litigation Reform Act, enacted April 26, 1996, the Court is required to screen complaints seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(b)(1), (2).

A complaint or portion thereof should only be dismissed for failure to state a claim upon which relief may be granted if

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- i. Plaintiff has also filed an amended complaint (DE #3). His motion to amend (DE #3) is denied as moot.

it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Furthermore, pro se complaints must be held "to less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520-21 (1972), and each allegation must be accepted as true. See Murphy v. Lancaster, 960 F.2d 746, 748 (8th Cir. 1992). However, broad conclusory allegations, even in a pro se complaint, are insufficient to state a claim under 42 U.S.C. § 1983. Grady v. Wilken, 735 F.2d 303, 305 (8th Cir. 1984). A well-pleaded complaint must contain something more than mere conclusory statements that are unsupported by specific facts. Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985).

In his complaint the plaintiff alleges that a letter from the United States District Court was received by him on September 2, 2000, "opened" and only secured by a piece of tape across the back to hold it shut. Plaintiff has attached proof of exhaustion of this claim only. To avoid dismissal without prejudice, prisoners filing §1983 cases must allege and show that they have exhausted all available state administrative remedies. Chelette v. Harris, 229 F.3d 684 (8th Cir. 2000); McAlphin v. Morgan, 216 F.3d 680 (8th Cir. 2000); Brown v. Toombs, 139 F.3d 1102, 1104 (6th Cir. 1998), cert.denied, 525 U.S. 833, 119 S. Ct. 88 (1998). The grievance policy of the Arkansas Department of Correction requires the inmate to appeal denials of his grievance through the level of the Deputy/Assistant Director. The Deputy/Assistant Director's

response in Plaintiff's grievance #EA-00-1619 refers only to the September, 2000 incident. Plaintiff has attempted to include previously unexhausted claims of two other incidents which occurred in 1997 and 1998 at other units; however, the court finds that he may not "bootstrap" these claims into his current complaint.

Further, the undersigned finds plaintiff's complaint legally frivolous. The clerk of this court confirms that mail is sometimes sent without sealing, and that tape is routinely used to assure that the envelope remains shut. Also, even if true, an isolated incident of inadvertent opening of inmate's incoming legal mail, without evidence of improper motive or resulting interference with inmate's right to counsel or access to courts, does not rise to the level of a constitutional violation. Gardner v. Howard, 109 F.3d 427 (8th Cir. 1997).

THEREFORE, the Magistrate Judge recommends that plaintiff's complaint be dismissed without prejudice. The Magistrate Judge further recommends that the Court certify, pursuant to 28 U.S.C. §1915(a), that any appeal taken from the order and judgment would be frivolous and not taken in good faith.

Dated this 9th day of January, 2001.


UNITED STATES MAGISTRATE JUDGE