FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 15, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

BRADLEY KENNETH DENTON, Plaintiff, v. YAKIMA COUNTY LLC, Defendant.	No. 4:24-CV-5128-MKD ORDER DISMISSING ACTION; DENYING MOTION TO APPOINT COUNSEL **ECF No. 16** **1915(g)**

Before the Court is Plaintiff's Third Amended Complaint (TAC), ECF No. 15. Plaintiff, an individual currently housed at the Coyote Ridge Corrections Center, is proceeding *pro se* and *in forma pauperis*. Defendant has not been served. Plaintiff claims that Defendant violated his rights under the Sixth Amendment. *Id*. at 4-5. He requests monetary damages. *Id*. at 9.

As a general rule, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, "[a]ll causes of action alleged in an original complaint

which are not alleged in an amended complaint are waived." *King v. Atiyeh,* 814 F.2d 565, 567 (9th Cir. 1987) (citation omitted). Furthermore, defendants not named in an amended complaint are no longer defendants in the action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Accordingly, the County of Yakima has been terminated from this action. Yakima County LLC has been added.

Liberally construing the TAC in the light most favorable to Plaintiff, the Court finds that it fails to cure all the deficiencies of the Second Amended Complaint and does not state a claim upon which relief may be granted.

YAKIMA COUNTY

Plaintiff names "Yakima County LLC" as the only Defendant to this action. ECF No. 15 at 1, 3. Yakima County is not a limited liability company, but rather a county within the State of Washington. However, a municipality or other local governmental entity cannot be held liable under Section 1983 for their employees' acts unless Plaintiff can prove the existence of unconstitutional policies, regulations, or ordinances, promulgated by officials with final policymaking authority. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121-22 (1988); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy,

inflicts the injury that the government as an entity is responsible under § 1983." *Monell*, 436 U.S. at 694. Although a single decision may satisfy the "policy" requirement, that decision must have been made by one of the municipality's authorized decision makers, by an official who "possesses final authority to establish municipal policy with respect to the [challenged] action." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-81 (1986).

For Plaintiff to state a valid claim against Yakima County under Section 1983, he must show either that the County engaged in a pattern of failing to properly train its employees and that the failure resulted in a violation of Plaintiff's constitutional rights, or that a single decision was made by an authorized policy maker at the County, as defined by the Supreme Court in *Pembaur*, and that the decision resulted in a violation of Plaintiff's constitutional rights. *Id*.

Here, Plaintiff notes that the purpose underlying CrR 3.3 is to protect a defendant's constitutional right to a speedy trial, and he asserts that Defendant Yakima County has failed to property train its employees "in use of CrR 3.3[.]" ECF No. 15 at 5. However, Plaintiff presents no facts to support his conclusory assertion that Defendant Yakima County failed to properly train its employees. Further, he presents no facts showing that Defendant Yakima County engaged in a pattern or practice that resulted in the deprivation of his constitutional rights, or

that any decision was made by an authorized policy maker that resulted in a violation of his constitutional rights. As presented, Plaintiff has failed to state a claim against Defendant Yakima County.

PLAINTIFF'S ALLEGATIONS

Plaintiff asserts that his Sixth Amendment "right to a public and speedy trial" was violated in 2019 when, as the Washington State Court of Appeals determined, the "Superior Courts of Washington in and for Yakima County" failed to follow CrR 3.3. ECF No. 15 at 4-5, 9. Plaintiff provides the citation for the Washington State Court of Appeals opinion in his criminal case. *Id*. at 5, 10. Although he merely provides the case citation and an excerpt from the opinion, the Court takes judicial notice of the state appellate court's decision, which provides some context to Plaintiff's instant allegations.[1] *State v. Denton*, 516 P.3d 422 (Wash. Ct. App. 2022). The Washington State Court of Appeals stated that Plaintiff was convicted in 2020 in the Yakima County Superior Court of second-degree rape, assault in violation of a protection order, and two counts of misdemeanor violation of a protection order. *Id*. at 447. Plaintiff appealed his conviction. *Id*.

[1] *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005) (noting it is appropriate to take judicial notice of materials from another tribunal).

On August 30, 2022, the Washington State Court of Appeals held that the trial court abused its discretion in granting continuances to the State over Plaintiff's objections beyond the speedy trial rule's time limits due to congestion and routine backlogs at the crime labs while the prosecutor awaited DNA test results. *Id*. at 459. Plaintiff's convictions were reversed and remanded for dismissal with prejudice. *Id*. at 459-60. In an Affidavit filed with this Court, Plaintiff states that he was released on October 14, 2022, when the Department of Corrections was given the release order. ECF No. 4 at 4.

SIXTH AMENDMENT SPEEDY TRIAL ACT

Plaintiff asserts that his Sixth Amendment right to a speedy and public trial was violated. ECF No. 15 at 4. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. A claim for violation of the Sixth Amendment speedy trial right is analyzed "by applying a balancing test involving four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the prejudice to the defendant." *United States v. Gregory*, 322 F.3d 1157, 1161 (9th Cir. 2003) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). "A defendant's right to a speedy trial attaches when he is accused," which for Sixth Amendment purposes occurs when a criminal defendant "is indicted or when he is subject to 'the actual restraints

imposed by arrest and holding to answer a criminal charge.'" *United States v. Mills*, 810 F.2d 907, 909 (9th Cir. 1987) (quoting *United States v. Marion*, 404 U.S. 307, 320 (1971)) (other citation omitted).

Plaintiff alleges that Defendant "did not follow CrR 3.3" and, as a result, violated his Sixth Amendment right to a speedy trial. ECF No. 15 at 4-5, 9. However, he has once again presented no facts supporting a reasonable inference that any person amenable to suit under 42 U.S.C. § 1983 violated his Sixth Amendment speedy trial rights. As presented, Plaintiff has failed to state a claim upon which relief may be granted for violation of his right to a speedy trial.

MOTION TO APPOINT COUNSEL

Plaintiff requests the appointment of counsel to assist him in this action. ECF No. 16. The Court has discretion to designate counsel pursuant to 28 U.S.C. § 1915(e)(1) only in "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Mallard v. U.S. Dist. Court for S.D. of Iowa*, 490 U.S. 296, 302, & n.3 (1989) (noting the Court may only request attorneys to represent impoverished litigants; there is no compensation available for them). Determining whether exceptional circumstances exist requires Plaintiff's "likelihood of success on the merits" and "ability . . . to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id*. (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

Plaintiff seeks the appointment of counsel because he is an "indigent inmate whose means and resources are extremely limited[.]" ECF No. 16 at 1. Plaintiff states that he believes "appointed counsel could be crucial to the continuing of complaint." *Id*. However, Plaintiff has failed to demonstrate exceptional circumstances to warrant the appointment of counsel. In this Order, the Court has advised Plaintiff of the deficiencies in his claims and has ordered dismissal of his TAC. Therefore, Plaintiff's motion to appoint counsel, ECF No. 16, is **DENIED**.

CONCLUSION

On March 5, 2025, the Court advised Plaintiff of the deficiencies in his SAC and granted him the opportunity to file a TAC or to voluntarily dismiss his complaint. ECF No. 14. Plaintiff was instructed that in any TAC, he must allege with specificity the names of the persons who caused or personally participated in causing the alleged deprivation of his constitutional rights, the dates on which the conduct of Defendant(s) allegedly took place, and the specific conduct or action that Plaintiff alleges is unconstitutional. *Id*. at 7. Plaintiff was cautioned that if he amended his complaint and the Court found that the TAC was frivolous, malicious, or failed to state a claim, the TAC would be dismissed pursuant to 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2), and such a dismissal would count as one of the dismissals under 28 U.S.C. § 1915(g). *Id*. at 8. Despite these orders, Plaintiff has submitted a TAC that once again fails to state a claim for relief.

For the reasons set forth in the Court's Third and Final Order to Amend or Voluntarily Dismiss Complaint, ECF No. 14, the Third Amended Complaint, ECF No. 15, is **DISMISSED** with prejudice for failure to state a claim against Defendant upon which relief may be granted. 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's Third Amended Complaint may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims *in forma pauperis*.**

Accordingly, IT IS SO ORDERED:

1. The Third Amended Complaint, ECF No. 15, is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

2. Plaintiff's Motion to Appoint Counsel, **ECF No. 16**, is **DENIED**.

3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith.

IT IS SO ORDERED. The Clerk of Court is directed to enter this Order, enter judgment, forward copies to Plaintiff, and **CLOSE THE FILE**. The Clerk of Court is further directed to forward a copy of this Order to the Office of the Attorney General of Washington, Corrections Division.

DATED April 15, 2025.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE