

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

Nov 09, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT J. HILL,
Plaintiff,
v.

No. 4:23-CV-05113-SAB

ORDER DISMISSING ACTION

STEPHEN SINCLAIR, TYLER
TOMPKINS, BILLIE PETERSON,
and CHERYL STRANGE,
Defendants.

1915(g)

By Order filed September 8, 2023, the Court advised Plaintiff of the deficiencies of his initial complaint and directed him to file a First Amended Complaint or to voluntarily dismiss his complaint within sixty (60) days. ECF No. 6. Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

The Court cautioned Plaintiff that if he did not amend as directed, or voluntarily dismiss, the Court would dismiss his complaint for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). *Id.* at 7. Plaintiff did not comply with the Court's directive. Rather, Plaintiff filed a twenty page "Declaration," consisting mainly of letters addressed to Defendant Strange, on

1 September 29, 2023, and “Objections to Dismissal with Prejudice” on November
2 6, 2023. ECF Nos. 7 and 8.

3 Having reviewed Plaintiff’s submissions in the light most favorable to him,
4 the Court finds that Plaintiff has failed to state a claim upon which relief may be
5 granted. Specifically, Plaintiff’s assertions that the failure of supervisory state
6 officials to conform prison policies to state statutes resulted in his inability to apply
7 for a furlough in 2020, was insufficient to state a constitutional violation. *See*
8 *Baumann v. Arizona Dep’t of Corrections*, 754 F.2d 841, 843–44 (9th Cir. 1985).
9 ECF No. 6 at 3–5; Also, he failed to present facts, apart from his conclusory
10 assertions, supporting a claim of retaliation under *Rhodes v. Robinson*, 408 F.3d
11 559, 562, 567–68 n. 11 (9th Cir. 2005). *See* ECF No. 6 at 5–6. Plaintiff’s
12 Declaration and Objections do not cure these deficiencies.

13 For the reasons set forth in the Order to Amend or Voluntarily Dismiss
14 Complaint, ECF No. 6, this action is **DISMISSED** with prejudice for failure to
15 state a claim against Defendants upon which relief may be granted. 28 U.S.C. §§
16 1915(e)(2) and 1915A(b)(1).

17 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
18 brings three or more civil actions or appeals which are dismissed as frivolous or for
19 failure to state a claim will be precluded from bringing any other civil action or
20 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
21 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
22 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s First Amended**
23 **Complaint may count as one of the three dismissals allowed by 28 U.S.C. §**
24 **1915(g) and may adversely affect his ability to file future claims.**

25 Accordingly, **IT IS HEREBY ORDERED:**

26 1. This action is **DISMISSED with prejudice** for failure to state a claim
27 upon which relief may be granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

28 2. This dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

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

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

7 **DATED** this 9th day of November 2023.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
Chief United States District Judge