

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRANDON STONE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-02071-JPH-TAB
)	
K. MCCALLISTER, et al.)	
)	
Defendants.)	

Order Screening Complaint and Directing Further Proceedings

**I.
Screening Standard**

The plaintiff is a prisoner currently incarcerated at Pendleton Correctional Industrial Facility. Because the plaintiff is a “prisoner” as defined by 28 U.S.C. § 1915A(c), this Court has an obligation under 28 U.S.C. § 1915A(b) to screen his complaint before service on the defendants. Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss the complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017). To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Pro se complaints such as that filed by the plaintiff are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015).

II. The Complaint

The plaintiff brings this action pursuant to 42 U.S.C. § 1983 against defendants K. McCallister, Eric Andrews, and the Indiana Department of Correction (“IDOC”). He alleges that on May 8, 2019, Officer Andrews threw away all of the plaintiff’s personal property even though the plaintiff was allowed to have the property in his cell. When the plaintiff asked what happened to his property, Officers Andrews smiled and told the plaintiff he threw it away. Officer Andrews ignored his superior officer’s order to leave the area. Instead, he stood nearby and loudly hummed while staring at the plaintiff. The plaintiff “decided to charge him.”

Other correctional officers intervened, tackling the plaintiff to the ground. Officer Andrews then began choking the plaintiff, squeezing “really hard.” The plaintiff told the Officers he was done struggling, but Officer Andrews tightened his grip, “completely cutting off” the plaintiff’s airway. The plaintiff then bit Officer Andrews, which led him to loosen his grip, so the plaintiff could breathe. Approximately a minute later, the plaintiff was subdued on the ground, in restraints, and compliant, Officer K. McCallister sprayed the plaintiff in the face with OC Spray without warning.

The plaintiff seeks monetary damages for his injuries.

III. Discussion of Claims

Applying the screening standard to the factual allegations in the Complaint, certain claims are dismissed while other claims shall proceed.

Although the plaintiff names the IDOC as a defendant, he does not provide any allegations against the IDOC. But even if he did, he cannot bring an action for damages against the IDOC because of Eleventh Amendment immunity. A suit against a state agency is treated as a suit against

the state itself for Eleventh Amendment purposes, and the Eleventh Amendment immunizes an unconsenting state from suits for damages in federal court. *Smith v. Utah Valley Univ.*, 619 Fed. Appx. 559, 560 (7th Cir. 2015) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984)); *see Thomas v. Illinois*, 697 F.3d 612, 613 (7th Cir. 2012) (“Congress did not abrogate the states’ sovereign immunity from suit under section 1983, as it could have done.”). Accordingly, the plaintiff’s claims against the IDOC are **dismissed**.

However, the plaintiff’s allegations against defendants K. McCallister and Eric Andrews are sufficient to state Eighth Amendment excessive force claims against them. These claims **shall proceed**.

This summary of claims includes all of the viable claims identified by the Court. All other claims have been dismissed. If the plaintiff believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through June 28, 2019**, in which to identify those claims.

IV. Service of Process

The clerk is **directed** pursuant to *Fed. R. Civ. P.* 4(c)(3) to issue process to defendants (1) K. McCallister, and (2) Eric Andrews in the manner specified by *Fed. R. Civ. P.* 4(d). Process shall consist of the complaint (docket 1), applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

The clerk is **directed to terminate** IDOC as a defendant in this action.

SO ORDERED.

Date: 6/7/2019



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

BRANDON STONE

254703

PENDLETON - CORRECTIONAL INDUSTRIAL FACILITY

CORRECTIONAL INDUSTRIAL FACILITY

Inmate Mail/Parcels

5124 West Reformatory Road

PENDLETON, IN 46064

Electronically to IDOC:

K. McCallister – Employee, Pendleton Correctional Industrial Facility

Eric Andrews – Employee, Pendleton Correctional Industrial Facility