

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:06-CT-3135-FL

JOSEPH JOHN URBANIAK, JR.,            )  
  )  
                          Plaintiff,            )  
  )  
                          v.                    )  
  )  
SGT. DONNIE STANLEY, et al.,         )  
  )  
                          Defendants.         )

ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983. The matter is before the court for frivolity review pursuant to 28 U.S.C. § 1915. Section 1915 provides that courts shall review complaints in which prisoners seek relief from a governmental entity or officer and dismiss such complaints when they are “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(i).

A complaint may be found frivolous because of either legal or factual deficiencies. First, a complaint is frivolous where “it lacks an arguable basis . . . in law.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are based on an “indisputably meritless legal theory” and include “claims of infringement of a legal interest which clearly does not exist.” Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994) (quoting Neitzke, 490 U.S. at 327). Under this standard, complaints may be dismissed for failure to state a claim cognizable in law, although frivolity is a more lenient standard than that for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Neitzke, 490 U.S. at 328. Second, a complaint may be frivolous where it “lacks an arguable basis . . . in fact.” Id. at 325. Section 1915 permits federal courts “to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” See Denton v. Hernandez, 504 U.S. 25, 32 (1992) (citing Neitzke, 490 U.S. at 327).


Plaintiff brings this action against Sergeant Donnie Stanley (hereinafter “defendant Stanley”), Captain John Meeks (hereinafter “defendant Meeks”), Lieutenant Thomas Tart (hereinafter “defendant Tart”), Captain A.L. Gregory (hereinafter “defendant Gregory”), Sherwood R. McCabe (hereinafter “defendant McCabe”), Joseph B. Hall (hereinafter “defendant Hall”), Jerry McQueen (hereinafter “defendant McQueen”), James Currin (hereinafter “defendant Currin”), Officer Rodney S. Jackson (hereinafter “defendant Jackson”), Gerotha R. Spain (hereinafter “defendant Spain”), Officer Kenneth Jones (hereinafter “defendant Jones”), J. Baker Williams (hereinafter “defendant Williams”), Norma Batten (hereinafter “defendant Batten”), Cordelia Clark (hereinafter “defendant Clark”), R. C. Lewis (hereinafter “defendant Lewis”), and B.A. Thompson (hereinafter “defendant Thompson”). In his complaint, plaintiff alleges that his first amendment and due process rights were violated because he was denied several book and magazine publications.

Plaintiff’s claims against defendants McCabe, McQueen, Hall, Jones, Williams, Thompson, and Spain arise out of their participation in plaintiff’s grievance process. Plaintiff has no constitutional right to participate in a grievance process. See Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994). Accordingly, plaintiff’s claim against these defendants is DISMISSED as frivolous.

As for plaintiff’s claims against the remaining defendants, these claims are not clearly frivolous. Accordingly, plaintiff is permitted to proceed on these claims.

In sum, plaintiff’s claims against defendants McCabe, McQueen, Hall, Jones, Williams, Thompson, and Spain are DISMISSED as frivolous. However, plaintiff’s remaining claims against the remaining defendants are not clearly frivolous. Accordingly, the Clerk of Court is DIRECTED to maintain management of this matter in accordance with the district plan.

SO ORDERED, this 18<sup>th</sup> day of ~~December~~ <sup>January</sup>, 2006.

  
LOUISE W. FLANAGAN  
Chief United States District Judge