

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

**FREDRICK NORRIS
ADC #095167**

PLAINTIFF

v.

No: 4:24-cv-00052-LPR-PSH

JEROME L. EASON, *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following Recommendation has been sent to United States District Judge Lee P. Rudofsky. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection, and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

Plaintiff Frederick Norris, an inmate at the Arkansas Division of Correction's Randall Williams Correctional Facility, filed a *pro se* complaint on January 22, 2024 (Doc. No. 2). His application to proceed *in forma pauperis* has been granted (Doc. No. 4). Norris subsequently filed an amended complaint (Doc. No. 6) and an addendum (Doc. No. 7). The Court has reviewed Norris' amended complaint, as

supplemented, and finds that his claims should be dismissed for failure to state a claim upon which relief may be granted.

I. Screening Standard

Federal law requires courts to screen prisoner complaints. 28 U.S.C. § 1915A, 1915(e)(2). Claims that are legally frivolous or malicious; that fail to state a claim for relief; or that seek money from a defendant who is immune from paying damages should be dismissed before the defendants are served. 28 U.S.C. § 1915A, 1915(e)(2). Although a complaint requires only a short and plain statement of the claim showing that the pleader is entitled to relief, the factual allegations set forth therein must be sufficient to raise the right to relief above the speculative level. *See* Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007) (“a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment]to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .”). While construed liberally, a *pro se* complaint must contain enough facts to state a claim for relief that is plausible on its face, not merely conceivable.

II. Analysis

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that the conduct of a defendant acting under color of state law deprived him of a right, privilege, or immunity secured by the United States Constitution or by federal law.

42 U.S.C. § 1983. Norris alleges that defendant Sergeant Jerome Eason made false accusations against him in August of 2023, resulting in disciplinary action. Doc. No. 6 at 5. He claims that he did not receive due process at the disciplinary hearing and that his disciplinary conviction was wrongfully upheld on appeal. *Id.* at 5-11. For the reasons described below, the undersigned finds he fails to describe a viable claim for relief.

Norris' allegations that Eason issued a disciplinary against him based on false accusations is not sufficient to state a § 1983 claim as a matter of law. *See Dixon v. Brown*, 38 F.3d 370 (8th Cir. 1994) (recognizing that “the filing of a false disciplinary charge is not itself actionable under § 1983”); *Sprouse v. Babcock*, 870 F.2d 450, 452 (8th Cir. 1989) (same).¹ Further, Norris cannot maintain a due process claim based on the disciplinary process unless he can “demonstrate that he was deprived of life, liberty or property by government action.” *Phillips v. Norris*, 320 F.3d 844, 846 (8th Cir. 2003). Norris was not deprived of life or property; accordingly, he must identify the deprivation of a liberty interest sufficient to sustain a due process challenge to his prison disciplinary proceeding. *Id.* at 847; *Sandin v.*

¹ *See also Daniels v. Ferguson*, 2008 WL 698485, *9 (W.D. Ark. March 13, 2008) (“To the extent Daniels contends his Due Process rights were violated because the disciplinary charges were fabricated or the events simply never occurred, courts have held that a prisoner enjoys no constitutional guarantee to be free from false charges that may lead to punishment.”) (citing *Freeman v. Rideout*, 808 F.2d 949, 951 (2nd Cir. 1986) and *Glick v. Sargent*, 696 F.2d 413, 414 (8th Cir. 1983)).

Conner, 515 U.S. 472, 484 (1995). A prisoner has no liberty interest in having certain procedures followed in the disciplinary process; rather, the liberty interest arises from the “nature of the prisoner’s confinement.” *Phillips*, 320 F.3d at 847. “In order to determine whether an inmate possesses a liberty interest, we compare the conditions to which the inmate was exposed in segregation with those he or she could ‘expect to experience as an ordinary incident of prison life.’” *Phillips*, 320 F.3d at 847 (quoting *Beverati v. Smith*, 120 F.3d 500, 503 (4th Cir. 1997)).

Generally, an inmate has no liberty interest in avoiding segregated confinement, as long as the conditions do not amount to an “atypical and significant” hardship that would give rise to due process protection as set forth in *Sandin v. Conner*, 515 U.S. 472, 483-484 (1995). The Eighth Circuit Court of Appeals has “consistently held that administrative and disciplinary segregation are not atypical and significant hardships under *Sandin*.” *Portly-El v. Brill*, 288 F.3d 1063, 1065 (8th Cir. 2002). An inmate making a due process challenge to confinement in segregation is required to “make a threshold showing that the deprivation of which he complains imposed an ‘atypical and significant hardship.’” *Id.* (quoting *Sims v. Artuz*, 230 F.3d 14, 22 (2d Cir. 2000)).²

² See also *Smith v. McKinney*, 954 F.3d 1075, 1082 (8th Cir. 2020) (holding that there is no atypical and significant hardship when an inmate is demoted to segregation or deprived of commissary, phone, and visitation privileges); *Persechini v. Callaway*, 651 F.3d 802, 807 n.4 (8th Cir. 2011) (stating that inmates do not have a liberty interest in maintaining a particular classification level).

Norris does not describe the punishment he received as a result of his disciplinary conviction in his amended complaint (Doc. No. 6). However, he submitted a copy of the disciplinary conviction with his addendum (Doc. No. 7). That indicates he received 30 days punitive isolation; 60 days restricted commissary, phone, and visitation; and a reduction in class. Doc. No. 7 at 3. Norris does not otherwise describe the conditions he endured as a result of his disciplinary conviction, and he fails to assert how any conditions to which he was exposed constituted an atypical and significant hardship. Norris therefore fails to state a due process claim related to the August 2023 disciplinary.

III. Conclusion

For the reasons stated herein, it is recommended that:

1. Norris' complaint be dismissed without prejudice for failure to state a claim upon which relief may be granted; and
2. Dismissal of this action count as a "strike" within the meaning of 28 U.S.C. § 1915(g).
3. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from the order adopting this recommendation would not be taken in good faith.

It is so recommended this 27th day of February, 2024.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line.

UNITED STATES MAGISTRATE JUDGE