

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 23, 2024*

Decided January 25, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2549

TERRENCE T. LaFAIVE,
Plaintiff-Appellant,

v.

PETER M. WOLFF, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-cv-1348-pp

Pamela Pepper,
Chief Judge.

ORDER

Terrence LaFaive appeals the dismissal of his complaint asserting that his defense attorney, a prosecutor, a judge, his parole officer, and two Wisconsin agencies

* The defendants-appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. *See* FED. R. APP. P. 34(a)(2)(C).

conspired against him to violate, first, his right to be free of self-incrimination under the Fifth Amendment, and second, his due process rights under the Fourteenth Amendment. LaFaive's complaint does not state a claim for relief because it contains no plausible allegations that the defendants harmed him, and so we affirm.

We credit the facts alleged in LaFaive's complaint for purposes of reviewing a dismissal on the pleadings. See *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015). The alleged conspiracy centers around two separate proceedings, the first a reconfinement hearing in front of an administrative law judge after LaFaive's parole for a Wisconsin conviction was revoked. LaFaive represented himself at the hearing. His parole officer had sent the judge an old file (called the "revocation packet"), which contained information about a different, prior parole revocation. LaFaive told the judge that the packet was incorrect, but the judge coerced him into going ahead because she was "already here" and LaFaive had been incarcerated for several months awaiting the hearing. The judge placed LaFaive under oath and asked him some questions (he does not specify these) before adjourning the hearing because she did not have a current packet. She left the record open and rescheduled the hearing. LaFaive does not take issue with anything that occurred at the second reconfinement hearing (the result of which is unclear from the record).

The second part of the alleged conspiracy centers around an unrelated criminal prosecution against LaFaive. After some tension during the plea negotiations, LaFaive asked his defense attorney for copies of all the attorney's communications with the prosecutor about the plea negotiations. His attorney provided two pages of emails. LaFaive then filed a public records request seeking all communications about his case between his defense attorney and the prosecutor. LaFaive received ten pages of documents, one of which showed that his attorney knew about the time and date of LaFaive's unrelated reconfinement hearing, though LaFaive had never mentioned it to him. LaFaive was concerned that his attorney appeared to have some inside knowledge of the other proceeding, and LaFaive also found it suspicious that the defense attorney did not initially provide him with all ten pages of communications with the prosecutor. Believing that there must be even more emails or text messages, LaFaive then filed for a writ of mandamus in state court in an attempt to force the release of any remaining communications. The state court dismissed the writ, concluding that any remaining correspondence between the two attorneys about confidential plea negotiations was not subject to public release.

Based on these allegations, LaFaive sued the defendants under 42 U.S.C. § 1983, asserting that these two situations show that the defendants conspired against him to violate his substantive and procedural due process rights under the Fourteenth Amendment and the right to refuse to give self-incriminating testimony under the Fifth Amendment. (Although he did not include the judge's name in the caption, his complaint made clear that he intended to sue the judge as well.) He sought unspecified injunctive relief, which he clarifies on appeal was a request to enjoin state courts from holding reconfinement hearings based on inaccurate information.

The district court dismissed the complaint under 28 U.S.C. § 1915A, concluding that the defendants were either immune from suit or, as in the case of the agencies, were nonjusticiable entities. In the alternative, it determined that LaFaive failed to state a claim for relief because he did not explain what rights the defendants allegedly violated nor allege any injury resulting from the supposed conspiracy. The court further ruled that amending the complaint would be futile. LaFaive then moved to amend the judgment under FED. R. CIV. P. 59(e), arguing that the immunity doctrines did not apply because he sought only injunctive relief and insisting that he stated a claim. The district court denied his motion, reasoning that the dismissal based on failure to state a claim was still appropriate. LaFaive appeals the two rulings, and we review the dismissal of the complaint under § 1915A de novo. *See Perez*, 792 F.3d at 776.

On appeal, LaFaive challenges the district court's interpretation of his factual allegations and insists that he provided enough information to state a plausible claim that the defendants conspired to violate his rights. But even if we were to assume that LaFaive validly alleged a conspiracy, he also needed to plead facts plausibly suggesting that the conspiracy caused a harm of constitutional magnitude. *See Campos v. Cook County*, 932 F.3d 972, 975 (7th Cir. 2019). He does not, because nothing in LaFaive's filings describes any cognizable injury from the defendants' actions.

True, LaFaive asserted in his complaint that the defendants violated his rights under the Fifth and Fourteenth Amendments, but we do not credit bare legal conclusions in a complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). His complaint needed to allege sufficient facts to create a plausible ground for relief based on an injury defendants caused. *See Buckley v. Fitzsimmons*, 20 F.3d 789, 796 (7th Cir. 1994); *Gabb v. Wexford Health Sources, Inc.*, 945 F.3d 1027, 1033–34 (7th Cir. 2019) (summary judgment appropriate on § 1983 claim if plaintiff cannot show defendants caused harm). But LaFaive does not point to any adverse outcome from the first reconfinement hearing, which ended without a disposition, and he explicitly does not want to challenge the

second hearing. (Nor could he, if that hearing led to a revocation and reconfinement that has not been overturned, *see Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).)

The only suggestion of an injury comes from LaFaive’s request for injunctive relief, in which he asks to enjoin judges from holding reconfinement hearings when they have incomplete or incorrect information. But LaFaive does not have standing to seek injunctive relief here. A plaintiff can state a claim for injunctive relief based on a risk of future harm only if the risk is “sufficiently imminent and substantial.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 435 (2021) (citations omitted). LaFaive does not meet that standard. We will not assume that LaFaive will violate the law or conditions of parole and therefore find himself in reconfinement proceedings again, *see Loertscher v. Anderson*, 893 F.3d 386, 396 (7th Cir. 2018), nor can he seek relief on behalf of third parties who might encounter similar circumstances, *see Campbell v. Miller*, 373 F.3d 834, 836 (7th Cir. 2004). *See also City of Los Angeles v. Lyons*, 461 U.S. 95, 103, 110 (1983).

LaFaive’s constitutional claim based on the communications between his defense attorney and the prosecutor in his criminal case meets a similar fate. LaFaive does not explain how these communications harmed him, apart from making him uneasy about his defense attorney’s performance. Even if the communications affected his criminal proceedings, he could not seek relief under § 1983 unless his convictions were first overturned. *See Heck*, 512 U.S. at 486–87. And if he believes his due process rights were violated because he might not have received copies of all the messages between the two attorneys, despite his open-records request, LaFaive does not show that the public has a constitutional right to see public officials’ case-related emails. Indeed, LaFaive attaches to his brief a decision of the Wisconsin Court of Appeals determining that he was not entitled to all the communications between the two attorneys. We lack jurisdiction to review a state court judgment under these circumstances. *See Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

Finally, LaFaive argues that the district court erred by not allowing him to amend his complaint. We review de novo a ruling that amendment would be futile. *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015). Because LaFaive does not articulate any harm he incurred due to the alleged conspiracy, we agree that amendment would be futile.

AFFIRMED