

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JASON CLENT LEWIS,

Plaintiff,

v.

CASE NO. 21-3084-SAC

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this *pro se* civil rights complaint under 42 U.S.C. § 1983. At the time of filing, Plaintiff was housed at the Saline County Jail in Salina, Kansas (“SCJ”). The Court granted Plaintiff leave to proceed *in forma pauperis*. On July 1, 2021, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 6) (“MOSC”) granting Plaintiff until July 26, 2021, in which to show good cause why his Complaint should not be dismissed or to file a complete and proper amended complaint to cure the deficiencies set forth in the MOSC. The MOSC was mailed to Plaintiff at his current address of record and was returned as undeliverable. (Doc. 7.) The Court’s Local Rules provide that “[e]ach attorney or pro se party must notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or pro se party is sufficient notice.” D. Kan. Rule 5.1(c)(3). Plaintiff has failed to respond to the MOSC by the Court’s deadline and has failed to show good cause why his Complaint should not be dismissed for failure to state a claim.

In the MOSC, the Court found that it appears as though Plaintiff may be alleging a failure to protect him while housed at the SCJ. However, Plaintiff has failed to allege who violated his constitutional rights and names “state officials” and “federal officials” as defendants. Plaintiff does not provide supporting facts regarding whether or not anyone was aware that the other

inmates were a danger to Plaintiff. Plaintiff has failed to allege sufficient facts to show that a defendant was both aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and that they also drew the inference.

Plaintiff has failed to allege how any individual personally participated in the deprivation of his constitutional rights. An essential element of a civil rights claim against an individual is that person's direct personal participation in the acts or inactions upon which the complaint is based. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985); *Henry v. Storey*, 658 F.3d 1235, 1241 (10th Cir. 2011) (“But § 1983 imposes liability for a defendant’s own actions—personal participation in the specific constitutional violation complained of is essential.”) (citing *Foote v. Spiegel*, 118 F.3d 1416, 1423–24 (10th Cir. 1997) (“Individual liability under § 1983 must be based on personal involvement in the alleged constitutional violation.”) (citation omitted)); *Trujillo v. Williams*, 465 F.3d 1210, 1228 (10th Cir. 2006) (“In order for liability to arise under § 1983, a defendant’s *direct personal responsibility* for the claimed deprivation . . . must be established.”) (emphasis added) (citation omitted)). Conclusory allegations of involvement are not sufficient. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (“Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.”). As a result, a plaintiff is required to name each defendant not only in the caption of the complaint, but again in the body of the complaint and to include in the body a description of the acts taken by each defendant that violated plaintiff’s federal constitutional rights.

The MOSC states that “[i]f Plaintiff does not file an amended complaint within the prescribed time that cures all the deficiencies discussed herein, this matter will be decided based upon the current deficient Complaint and may be dismissed without further notice.” (Doc. 6, at

7.) Plaintiff has failed to show good cause why his Complaint should not be dismissed for failure to state a claim.

IT IS THEREFORE ORDERED BY THE COURT that this matter is **dismissed** for failure to state a claim.

IT IS SO ORDERED.

Dated August 3, 2021, in Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
SENIOR U. S. DISTRICT JUDGE