

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Lakesha L. Norington,
Appellant-Plaintiff,

v.

Jonathan Cruz,
Appellee-Defendant.

March 15, 2022

Court of Appeals Case No.
21A-CT-1855

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-2103-CT-259

Weissmann, Judge.

[1] Inmate Lakesha L. Norington seeks civil damages against Correctional Officer Jonathan Cruz for criminal acts he allegedly committed against her during and after a prison disciplinary incident. Because there is no private right of action under 42 U.S.C. § 1983 or Article I, Section 12 of the Indiana Constitution, we affirm the trial court’s dismissal of Norington’s complaint for failure to state a claim upon which relief can be granted.

Facts

[2] Norington is imprisoned at the Miami Correctional Facility, where Officer Cruz is employed. One day in June 2020, Officer Cruz ordered Norington to leave the prison’s “chow hall” while she was awaiting her lunch and dinner “meal sacks.” App. Vol. II, pp. 11-12. When Norington refused, Officer Cruz sprayed her with a chemical agent, placed her in mechanical restraints, and took her to a restrictive housing unit. Officer Cruz then filed a prison disciplinary report against Norington, accusing her of disorderly conduct. Norington was found not guilty of the conduct violation.

[3] Several months later, Norington filed a pro se civil complaint against Officer Cruz, alleging the criminal acts of perjury, false reporting, disorderly conduct, intimidation, and harassment.¹ Officer Cruz moved to dismiss the complaint

¹ More specifically, Level 6 felony perjury under Indiana Code § 35-44.1-2-1(a)(1); Class B misdemeanor false reporting under Indiana Code § 35-44.1-2-3(d)(1)(A); Class B misdemeanor disorderly conduct under Indiana Code § 35-45-1-3(a)(1) and (3); Class A misdemeanor intimidation under Indiana Code § 35-45-2-1(a)(1); and Class B misdemeanor harassment under Indiana Code § 35-45-2-2 (a)(2).

under Indiana Trial Rule 12(B)(6). Among other things, he claimed Norington did not have private rights of action under the criminal statutes. The trial court seemingly agreed, dismissing Norington’s complaint for failure to state a claim upon which relief can be granted.

Discussion and Decision

[4] On appeal, Norington, pro se, challenges the trial court’s dismissal of her complaint on two grounds. First, she argues that 42 U.S.C. § 1983 and Article I, Section 12 of the Indiana Constitution grant her private rights of action for Officer Cruz’s alleged criminal code violations. Second, she argues that dismissing her complaint was a violation of the trial court’s obligations under the Indiana Code of Judicial Conduct. We only review Norington’s former argument, as the latter is not properly before us. *See Cook v. State*, 612 N.E.2d 1085, 1087 (Ind. Ct. App. 1993) (“It is the exclusive province of the Supreme Court to review alleged violations of the Code of Judicial Conduct.”).

I. Standard of Review

[5] “A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it.” *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015) (per curiam). When ruling on a motion to dismiss, we “must view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant’s favor.” *Id.* “We review a trial court’s grant or denial of a Trial Rule 12(B)(6) motion de novo” and “will not affirm such a dismissal unless it is apparent that the facts alleged in the

challenged pleading are incapable of supporting relief under any set of circumstances.” *Id.* (internal quotation omitted).

II. 42 U.S.C. § 1983

[6] Norington incorrectly claims that 42 U.S.C. § 1983 confers a private right of action to enforce the provisions of the Indiana Criminal Code. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

[7] Norington reads too much into this federal statute. “It is well-established that § 1983 creates no substantive rights; it merely provides the procedure for enforcing substantive federal rights.” *Culver-Union Twp. Ambulance Serv. v. Steindler*, 629 N.E.2d 1231, 1233 (Ind. 1994). And “[s]tate law violations do not form the basis for imposing § 1983 liability.” *J.H. ex rel. Higgin v. Johnson*, 346 F.3d 788, 793 (7th Cir. 2003). Norington’s claim is therefore without merit.

III. Indiana Constitution

[8] Norington also claims, incorrectly, that Article I, Section 12 of the Indiana Constitution confers a private right of action to enforce the provisions of the

Indiana Criminal Code. Article I, Section 12 states: “All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.” Ind. Const. art. I, § 12.

- [9] Like 42 U.S.C. § 1983, Article I, Section 12 does not provide “a substantive ‘right’ of access to the courts” or a right “to bring a particular cause of action to remedy an asserted wrong.” *Blanck v. Ind. Dep’t of Corr.*, 829 N.E.2d 505, 511 (Ind. 2005). Rather, it “requires that where a cause of action has been created (by constitution, statute, or common law), courts must be open to provide remedy by due course of law.” *Id.* The proper inquiry is therefore whether Norington has private rights of action under the specific criminal statutes she alleges Officer Cruz violated.

IV. Indiana Criminal Code

- [10] Norington does not contend to have a private right of action under any criminal statute. *Compare* Appellant’s Br. p. 19 (stating her “civil complaint was not initiated or invoked under or pursuant to the cited and referenced State of Indiana statutory codes”), *with id.* at 20 (stating she is “entitled to initiate or invoke her civil complaint pursuant to . . . Article I, Section 12”). We therefore need not analyze whether such private rights of action exist.

[11] Ultimately, Norington has failed to show that her complaint against Officer Cruz states a claim upon which relief can be granted. We therefore affirm the trial court's dismissal of the complaint under Trial Rule 12(B)(6).

[12] The judgment is affirmed.

Najam, J., and Vaidik, J., concur.