

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 10-5790/6368

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 10, 2013
DEBORAH S. HUNT, Clerk

WILLIAM DAVID BURNSIDE,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 T. WALTERS, HICKS; MONTGOMERY;)
 CYNTHIA MAGELLON PULJIC; YMCA)
 OF MEMPHIS & MID-SOUTH, A Domestic)
 Tennessee Corporation,)
)
 Defendants-Appellees.)

ON REMAND FROM THE
SUPREME COURT OF THE
UNITED STATES

ORDER

BEFORE: BATCHELDER, Chief Judge; McKeague, Circuit Judge; Forester, District Judge.*

ALICE M. BATCHELDER, Chief Judge. William David Burnside, proceeding in forma pauperis, filed a complaint under 42 U.S.C. §§ 1983, 1985 and 1986 against Memphis police officers T. Walters, Hicks, and Montgomery, and numerous other defendants. The district court correctly dismissed his complaint for failure to state a claim upon which relief could be granted under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), or the Prison Litigation Reform Act (PLRA). The district court dismissed the complaint sua sponte without affording Burnside leave to amend the complaint because the Sixth Circuit had ruled that the PLRA mandates such dismissal. *See McGore v. Wigglesworth*, 114 F.3d 601, 604, 612 (6th Cir. 1997) (concluding that the PLRA give district

*The Honorable Karl S. Forester, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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courts “no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal”), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

We affirmed in an unpublished opinion, finding that *McGore*’s holding on this issue did not contradict the Supreme Court’s opinion in *Jones*. The Supreme Court granted Burnside’s writ of certiorari on May 13, 2013. On June 3, the Supreme Court vacated our prior judgment and remanded the case for further consideration in light of our recent published opinion in *LaFountain v. Harry*, No. 11-1496, 2013 WL 2221569 (6th Cir. May 22, 2013).

In *LaFountain*, we held that “under Rule 15(a) a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA.” *Id.* at *5. Consistent with this holding, we vacate the district court’s dismissal of Burnside’s complaint solely so that the district court “can determine, in its discretion” whether to allow Burnside to amend his complaint. *Id.* at *6. We remand for further proceedings consistent with this opinion.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah L. Smith", is written in a cursive style.

Clerk