NONPRECEDENTIAL DISPOSITION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 August 3, 2023*
Decided August 14, 2023

Before

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-3121

ANDY H. WILLIAMS JR.,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:21-cv-03543

Sara L. Ellis,
Judge.

O R D E R

Andy Williams appeals the dismissal of his complaint for lack of standing. He purported to sue the United States and 30 states seeking an injunction against the practice of low-pay and unpaid prison labor and a judicial declaration that the exception for prison labor in the Thirteenth Amendment's prohibition on slavery is

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

unconstitutional. Because Williams lacks a concrete, particularized, and actual or imminent injury, we affirm, though we clarify that this jurisdictional dismissal must be without prejudice.

Williams sought to sue for himself and on behalf of a class composed of "descendants of … Aboriginal, Indigenous, and African people who [were] in bondage" and are subjected to forced labor in prison with little-to-no pay. He asserted that the prison-labor exception to the Thirteenth Amendment's prohibition of slavery violates the antislavery provision as well as the First, Fifth, Eighth, and Fourteenth Amendments. He asked for damages and declaratory and injunctive relief in the form of "strik[ing] the offending language" from the Thirteenth Amendment.

Before the state defendants were served, the United States moved to dismiss the complaint for lack of subject-matter jurisdiction and for failure to state a claim upon which relief could be granted. *See* FED. R. CIV. P. 12(b)(1), (6). The United States did not file a notice of presentment, *see* N.D. ILL. L. RS. 5.3(b) (amended 2023), 78.1, nor did it submit a certificate of service with its motion (and Williams apparently did not have access to the electronic filing system, which would obviate the need for one, *see* N.D. ILL. L.R. 5.9). The district court did not set a briefing schedule and instead granted the motion three weeks later, without a response from Williams.

The court determined that it lacked subject-matter jurisdiction because Williams did not have Article III standing to challenge the practice of unpaid prison labor. Specifically, he had not alleged that he ever was, or imminently would be, incarcerated and subjected to involuntary servitude. The court also concluded that Williams failed to state a claim because "the Constitution is not unconstitutional." Williams moved for reconsideration, *see* FED. R. CIV. P. 59(e), but the court denied the motion. Williams timely appealed, and we review the issue of his standing de novo. *See Flynn v. FCA US LLC*, 39 F.4th 946, 952 (7th Cir. 2022).

The jurisdiction of federal courts is limited to resolving cases and controversies. U.S. CONST. art. III, § 2. For a case or controversy to exist, the plaintiff must have standing to sue, which means that he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). An injury in fact is one that is "concrete, particularized, and actual or imminent." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021).

Here, Williams has not alleged any concrete and particularized injury that is either actual or imminent. The thrust of Williams's complaint is that, for moral and religious reasons, he strongly objects to the practice of low-wage prison labor (which he calls "involuntary servitude"). But that is a generalized grievance that cannot support standing; "the psychological consequence presumably produced by observation of conduct with which one disagrees" is not an injury in fact, "even though the disagreement is phrased in constitutional terms." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485–86 (1982); *Freedom From Religion Found., Inc. v. Obama*, 641 F.3d 803, 807 (7th Cir. 2011)

Although Williams broadly alleges economic and emotional injuries resulting from both slavery and the practice of prison labor, he does not suggest that he personally has been subjected to these practices, *see TransUnion*, 141 S. Ct. at 2203, and any injury that Williams claims as a "descendant" is not sufficient to confer standing. *See In re Afr.-Am. Slave Descendants Litig.*, 471 F.3d 754, 759 (7th Cir. 2006). Williams also does not suggest that he is soon to be incarcerated. *See TransUnion*, 141 S. Ct. at 2210–11 (mere risk of future harm will not confer standing). Therefore, Williams's alleged injuries are speculative, not particular to him, and neither actual nor imminent. *See Carney v. Adams*, 141 S. Ct. 493, 499–500 (2020) (proponent must show that challenged practice is likely to cause him harm in the reasonably foreseeable future).

Williams's arguments to the contrary are unavailing. He insists that the existence of low-pay prison labor infringes upon his right to "exercise his faith" by "advocat[ing] on behalf of himself and all God's people to be free from slavery." But the mere existence of a practice offensive to Williams's religion does not burden his ability either to exercise his faith or to speak out against that practice. *See Valley Forge*, 454 U.S. at 485. And he has not identified any action by federal or state officials that has prevented him from exercising these rights. To the extent that Williams suggests that his constitutional rights to freedom of religion and speech require the federal courts to hear this lawsuit, his First Amendment rights do not supersede Article III's case-or-controversy requirement. *See id.* at 489.

Williams also argues that he has the right to act as a private attorney general and bring a lawsuit to vindicate the public interest, but he does not point to any statute that creates that vehicle for claims such as his. *See Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 300 (2010) (qui tam actions unavailable absent congressional intent). (The Civil Rights Act of 1866 does not, as Williams contends, authorize him to do so.) Nor can Williams, a pro se litigant, represent a

putative class of individuals, as he seems to wish. *See Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 830 (7th Cir. 1986) (citing 28 U.S.C. § 1654).

Having correctly determined that Williams lacked Article III standing, however, the district court should not have gone on to decide that his complaint failed to state a claim for relief. First, a dismissal under Rule 12(b)(6) is on the merits, *Ryder v. Hyles*, 27 F.4th 1253, 1258 (7th Cir. 2022), and a court cannot rule on the merits if it lacks jurisdiction, *Mack v. Resurgent Cap. Servs., L.P.*, 70 F.4th 395, 402 (7th Cir. 2023). Second, it is unclear whether Williams, a fee-paying plaintiff whose pleadings were not subject to screening under 28 U.S.C. § 1915(e)(2), was given the opportunity to respond to the government's motion to dismiss. It appears from the record that the United States did not even serve its motion on Williams, so his lack of response likely did not waive his opposition. Third, plaintiffs are ordinarily entitled to at least one chance to amend their complaints after a dismissal, unless amendment would be futile. *See Zimmerman v. Bornick*, 25 F.4th 491, 493–94 (7th Cir. 2022). The district court did not explain its rationale for immediately entering judgment and not allowing leave to amend.

None of these irregularities requires remand, however. Although it was premature to address the merits, a district court can dismiss a complaint "at any time" for lack of jurisdiction. FED. R. CIV. P. 12(h)(3). And, in our de novo review, we conclude that it would be futile to allow amendment of the jurisdictional allegations under 28 U.S.C. § 1653. As the proponent of federal jurisdiction, Williams must demonstrate that he has standing. *See Carney*, 141 S. Ct. at 499. Although he did not have a chance to respond to the motion to dismiss, he filed a Rule 59(e) motion and an appellate brief that do not elaborate on his jurisdictional allegations other than to say that he is "a man labeled as a felon." *See Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 555 (7th Cir. 2012) (recognizing that on appeal from dismissal, plaintiff may elaborate on factual allegations if new facts are consistent with the complaint). We construe pro se filings liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), but it takes too many speculative leaps to conclude that being "labeled as a felon" at some unknown time means that Williams has been or imminently will be subjected to prison labor. Because Williams has not come closer to alleging an injury in fact after multiple chances, we can safely conclude that allowing him to amend would have been futile. *See Zimmerman*, 25 F.4th at 494; *Pension Tr. Fund for Operating Eng'rs v. Kohl's Corp.*, 895 F.3d 933, 942 (7th Cir. 2018) ("Reversal is inappropriate if the plaintiff cannot identify how [he] would cure defects in [his] complaint.").

We will, however, modify the judgment to reflect that the dismissal for lack of subject-matter jurisdiction is a without-prejudice disposition. So modified, the judgment is AFFIRMED.