

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD D. ROMEO,)
)
 Plaintiff,)
)
 v.) Civil Action No. 04-153-SLR
)
 STATE OF DELAWARE, WILMINGTON)
 POLICE DEPT., DOUG BAYLOR,)
 NADINE DUPONT, and BERTINA)
 DUPONT,)
)
 Defendants.)

MEMORANDUM ORDER

The plaintiff, Ronald D. Romeo, a pro se litigant, has filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

When reviewing pauper applications, the court must make two separate determinations. First, the court must determine whether the plaintiff is eligible for pauper status pursuant to 28 U.S.C. § 1915. Based on the information provided in the plaintiff's in forma pauperis affidavit, the plaintiff's request to proceed in forma pauperis is granted. Second, the court must "screen" the complaint to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B).

The United States Supreme Court has held that 28 U.S.C. §

1915(e)(2)(B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989).¹

When reviewing complaints pursuant to 28 U.S.C. § 1915(e)(2)(B), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). Neal v. Pennsylvania Board of Prob. & Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A).² Under this standard, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are

¹ Neitzke applied § 1915(d) prior to the enactment of the PLRA. Section 1915(e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

² The bases for dismissal under § 1915A are virtually identical to § 1915(e)(2)(B). Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant immune from such relief. Therefore, the court applies the § 1915A standard of review when screening non-prisoner complaints pursuant to § 1915(e)(2)(B).

held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). As discussed below, the plaintiff's Section 1983 claims against the all of the defendants have no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B).

II. DISCUSSION

A. The Complaint

Plaintiff has named the State of Delaware, the Wilmington Police Department, Doug Baylor, Nadine DuPont and Bertina DuPont as defendants. However, plaintiff hasn't raised any specific allegations regarding any of the defendants. Rather, plaintiff alleges that he was arrested on June 25, 2003, after he got into an argument with defendant Bertina Dupont and called her an offensive name. (D.I. 2 at 2) Plaintiff further alleges that he was found guilty of harassment on August 20, 2003. (Id.) Plaintiff further alleges that "[t]he laws were used inappropriately in this case. This woman was not harassed. This was an argument between two neighbors." (Id.) Plaintiff also alleges that he has tried to use other avenues to resolve an on-going dispute with his neighbors, but he hasn't received any

assistance from State or City agencies. (Id.) He requests that the court appoint him counsel. He further requests that the court award him all legal expenses, as well as compensatory and punitive damages. Finally, he requests that the court order the City to implement a program to resolve neighborhood disputes.

(Id. at 4)

B. Analysis

Plaintiff is, in essence, challenging the fact of his conviction or duration of sentence. His sole federal remedy challenging the fact of his conviction or duration of his sentence is by way of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475 (1973). Furthermore, a plaintiff cannot recover under § 1983 for alleged wrongful incarceration unless he proves that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. See Heck v. Humphrey, 512 U.S. 477, 487 (1994). Here, plaintiff has not alleged, let alone proved, that his conviction or sentence was reversed or invalidated as provided by Heck. Consequently, his current claim for damages rests on an "inarguable legal conclusion" and is therefore, frivolous. See Neitzke, 490 U.S. at 326. Therefore, the court shall dismiss the complaint without prejudice pursuant to 28 U.S.C. §

1915(e)(2)(B).

NOW THEREFORE, at Wilmington this 27th day of April, 2004,
IT IS HEREBY ORDERED that:

1. Plaintiff's motion to proceed in forma pauperis (D.I. 1)
is granted.

2. Plaintiff's complaint is frivolous pursuant to 28 U.S.C.
§ 1915(e)(2)(B) and is dismissed without prejudice.

3. The clerk of the court shall mail a copy of this
Memorandum Order forthwith to plaintiff.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE