

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALBERT BROWN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-405-SLR
)
 KEVIN J. O'CONNELL,)
)
)
 Defendant.)

MEMORANDUM ORDER

Plaintiff Albert Brown, SBI #483775, is a pro se litigant who is presently incarcerated at the Multi-Purpose Criminal Justice Facility ("M.P.C.J.F.") in Wilmington, Delaware. Plaintiff 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.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. The court granted plaintiff leave to proceed in forma pauperis on May 7, 2003 and ordered plaintiff to file an authorization form within thirty days. Plaintiff filed the authorization form on May 20, 2003.

Once the pauper determination is made, the court must then determine whether the action 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)-1915A(b)(1).¹ If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and 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). Accordingly, 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 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

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint 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. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

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)).

The United States Supreme Court has held that § 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." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² Consequently, a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact." Id. As discussed below, plaintiff's claim has no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

Plaintiff alleges that defendant O'Connell, his court appointed counsel, violated his rights under the Fourteenth Amendment by failing to meet with plaintiff at the MPCJF, or answering plaintiff's letter's. (D.I. 2 at 3) Plaintiff further alleges that the defendant violated his rights under the Eighth Amendment by failing to file motions on plaintiff's behalf and telling plaintiff that he has no grounds for appeal. (Id.) Plaintiff requests compensatory damages. (Id.)

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (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).

Although plaintiff casts his complaint in terms of the Fourteenth and Eighth Amendments, in essence he is alleging that the defendant has violated his constitutional right to effective assistance of counsel under the Sixth Amendment. Section 1983 requires the plaintiff to show that the person who deprived him of a constitutional right was "acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)) (overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). Public defenders do not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in criminal proceedings. Polk County v. Dodson, 454 U.S. 312 (1981). Furthermore, public defenders are entitled to absolute immunity from civil liability under 42 U.S.C. § 1983. Black v. Bayer, 672 F.2d 309 (3d Cir. 1982). Because the defendant has not acted under color of state law and is immune from liability under 42 U.S.C. § 1983, plaintiff's claim lacks an arguable basis in law or in fact. Therefore, the court finds that plaintiff's claim is frivolous within the meaning of 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

NOW THEREFORE, IT IS HEREBY ORDERED this 29th day of July, 2003, that:

1. Plaintiff's complaint is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

2. The clerk shall cause a copy of this Memorandum Order to be mailed to plaintiff.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE