

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MARQUIS ROBINSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-1053-SLR  
 )  
 PUBLIC DEFENDER'S OFFICE, )  
 LAWRENCE M. SULLIVAN, and )  
 MR. PANKOWSKI, )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

Plaintiff Marquis Robinson, SBI #495049, is a pro se litigant who is presently incarcerated at the Plummer Work Release Center 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.

**I. STANDARD OF REVIEW**

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether plaintiff is eligible for pauper status. The court granted plaintiff leave to proceed in forma pauperis on January 16, 2004, determined that plaintiff had no assets with which to pay an initial partial filing fee and ordered him to file an

authorization form within thirty days. Plaintiff filed the authorization form on February 10, 2004.

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).<sup>1</sup> If the court finds 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 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). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable

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<sup>1</sup> 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).

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 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).<sup>2</sup> 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 claims 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)-1915A(b)(1).

## **II. DISCUSSION**

### **A. The Complaint and the Amended Complaint**

Plaintiff names three defendants in the complaint: Mr.

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<sup>2</sup> 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).

Pankowski ("Pankowski"), Mr. Lawrence Sullivan ("Sullivan"), and the "Public Defender's Office." (D.I. 1 at 1)<sup>3</sup> Plaintiff alleges that Pankowski, an assistant public defender, forged plaintiff's signature in order to waive his preliminary hearing. (Id. at 3) Plaintiff doesn't raise any allegations against either of the remaining defendants.

On December 29, 2003, plaintiff filed an amended complaint. (D.I. 9) Plaintiff alleges that Pankowski violated his rights under the Fourteenth Amendment by waiving plaintiff's right to a preliminary hearing. Plaintiff further alleges that Pankowski violated his rights under the Fourteenth Amendment by not investigating the charges against him. (Id. at 3) Plaintiff requests that the court order the defendants to pay him compensatory damages in the amount of \$300,000. (D.I. 1 at 5) On December 5, 2003, plaintiff filed a letter motion for appointment of counsel. (D.I. 4) Because the court finds that plaintiff's complaint is frivolous, his motion for appointment of counsel is moot.

## **B. Analysis**

### **1. Absolute Immunity**

Although plaintiff casts his complaint in terms of denial of his due process rights under the Fourteenth Amendment, he is, in

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<sup>3</sup> The correct title for this office is, the Office of the Public Defender. The court will refer to this defendant by its proper title.

essence, alleging that Pankowski has violated his constitutional right to effective assistance of counsel under the Sixth Amendment. Section 1983 requires a 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 Pankowski has not acted under color of state law and is immune from liability under 42 U.S.C. § 1983, plaintiff's claim against him lacks an arguable basis in law or in fact. Therefore, the court finds that plaintiff's claim against Pankowski is frivolous within the meaning of 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

## **2. Vicarious Liability**

Plaintiff raises no specific allegations against Sullivan. He merely asserts that Sullivan is the Public Defender for the State of Delaware. (D.I. 1 at 3) It appears that plaintiff is attempting to hold Sullivan liable for Pankowski's actions

because of his supervisory position. (Id.) Consequently, plaintiff's claim against Sullivan must fail. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton v. Harris, 489 U.S. 378, 389 (1989)). Here, plaintiff merely implies that Sullivan is liable because of his supervisory position. (D.I. 1 at 3)

Nothing in the complaint indicates that Sullivan was the "driving force [behind]" Pankowski's actions, or that he was aware of plaintiff's allegations regarding Pankowski and remained "deliberately indifferent" to plaintiff's plight. Sample v. Diecks, 885 F.2d at 1118. Consequently, to the extent that plaintiff is alleging Sullivan is vicariously liable for Pankowski's constitutional tort, his claim has no arguable basis in law or in fact. Therefore, plaintiff's vicarious liability claim against Sullivan is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

### **3. Sovereign and Eleventh Amendment Immunity**

To the extent that plaintiff is attempting to assert a claim against the Office of the Public Defender, this claim also fails. The Office of the Public Defender is an agency of the State of Delaware, created by the General Assembly to represent indigent defendants in criminal cases. 29 DEL. C. § 4602. By naming the Office of the Public Defender, plaintiff is actually naming the State of Delaware as a defendant in this action.

As noted above, to state a claim under 42 U.S.C. § 1983, plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West, 487 U.S. at 48 (citing Parratt, 451 U.S. at 535.) "[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Ospina v. Dep't of Corr., State of Delaware, 749 F.Supp. 572, 577 (D. Del. 1991) (citing Wills v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989)). Furthermore, "[a]bsent a state's consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant." Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d

Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam)). The State of Delaware has not waived its sovereign immunity under the Eleventh Amendment. See Ospina v. Dep't of Corrections, 749 F.Supp. at 579. Consequently, plaintiff's claim against the Office of the Public Defender has no arguable basis in law or in fact. Therefore, plaintiff's claim against the Office of the Public Defender is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

NOW THEREFORE, IT IS HEREBY ORDERED this 25th day of May, 2004, that:

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

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

3. Plaintiff's claim against the Office of the Public Defender is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1).

4. Plaintiff's letter motion for appointment of counsel (D.I. 4) is denied as moot.

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

Sue L. Robinson  
UNITED STATES DISTRICT JUDGE