

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD G. JOHNSON, :  
 :  
 Plaintiff, :  
 :  
 :  
 v. : Civil Action No. 09-299-JJF  
 :  
 OFFICER CROCKER and WILMINGTON: :  
 POLICE DEPARTMENT, :  
 :  
 Defendants. :

---

Ronald G. Johnson, Pro se Plaintiff. Wilmington, Delaware.

---

**MEMORANDUM OPINION**

July 15, 2009  
Wilmington, Delaware

Farnan, District Judge



Plaintiff Ronald G. Johnson ("Plaintiff"), a former inmate at the Howard R. Young Correctional Institution filed this civil rights action pursuant to 42 U.S.C. § 1983. (D.I. 2.) He appears pro se. For the reasons discussed below, the Court will grant him leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, will dismiss the claims against Defendant Wilmington Police Department ("the Police Department") as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1), and will allow Plaintiff to proceed against Defendant Officer Crocker ("Crocker").

#### **I. BACKGROUND**

Plaintiff alleges that he was falsely arrested by Crocker, that Crocker falsified his police report to charge Plaintiff with felony aggravated menacing and possession of a deadly weapon, and that Crocker refused to arrest an individual who robbed Plaintiff. Also named as a defendant is the Police Department.

#### **II. STANDARD OF REVIEW**

When a litigant proceeds in forma pauperis, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the Complaint by the Court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1)

provide that the Court may dismiss a complaint, at any time, if 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. An action is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and § 1915A is identical to the legal standard used when ruling on 12(b)(6) motions. Courteau v. United States, 287 F. App'x 159, 162 (3d Cir. 2008) (not published); Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000); Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to Plaintiff. Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007). A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Fed. R. Civ. P. 8. A complaint does not need detailed factual allegations, however, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to

relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. at 555 (citations omitted). The "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact)." Id. (citations omitted).

Plaintiff is required to make a "showing" rather than a blanket assertion of an entitlement to relief. Phillips v. County of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008).

"[W]ithout some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only 'fair notice,' but also the 'grounds' on which the claim rests." Id. (citing Twombly, 550 U.S. at 556 n.3). Therefore, "'stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest' the required element." Phillips v. County of Allegheny, 515 F.3d at 235 (quoting Twombly, 550 U.S. at 556 n.3). "This 'does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of' the necessary element." Id. at 234. Because Plaintiff proceeds pro se, his pleading is liberally construed and his Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by

lawyers." Erickson v. Pardus, 127 S.Ct. at 2200 (citations omitted).

### III. DISCUSSION

The Complaint names the Police Department as a Defendant, but there are no allegations directed against it. A municipality may only be held liable under § 1983 when the "execution of a government's policy or custom . . . inflicts the injury." Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990). While a government policy is established by a "decisionmaker possessing final authority," a custom arises from a "course of conduct . . . so permanent and well settled as to virtually constitute law." Andrews, 895 F.2d at 1480 (citing Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978)). Accordingly, a plaintiff seeking to recover from a municipality must (1) identify an allegedly unconstitutional policy or custom, (2) demonstrate that the municipality, through its deliberate and culpable conduct, was the "moving force" behind the injury alleged; and (3) demonstrate a direct causal link between the municipal action and the alleged deprivation of federal rights. Board of the County Comm'rs v. Brown, 520 U.S. 397, 404 (1997).

The Complaint does not allege that the Police Department was the "moving force" behind any alleged constitutional violation. Indeed, there are no allegations against the Police Department.

Absent any allegation that a custom or policy directly caused harm to Plaintiff, his § 1983 claim cannot stand. The claim against the Police Department is frivolous and it will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

#### **IV. CONCLUSION**

For the above reasons, the Plaintiff will be given leave to proceed in forma pauperis, the claims against the Wilmington Police Department will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1), and Plaintiff will be allowed to proceed against Defendant Crocker.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD G. JOHNSON, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 09-299-JJF  
 :  
 OFFICER CROCKER and WILMINGTON: :  
 POLICE DEPARTMENT, :  
 :  
 Defendants. :

**ORDER**

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion For Leave To Proceed In Forma Pauperis is **GRANTED**. (D.I. 11.)
2. The claims against Defendant Wilmington Police Department are **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).
3. The Court has identified what appears to be a cognizable claim within the meaning of 28 U.S.C. § 1915A(b) against Defendant Officer Crocker. Plaintiff may proceed against this Defendant.

IT IS FURTHER ORDERED that:

1. The Clerk of Court shall cause a copy of this Order to be mailed to Plaintiff.
2. Pursuant to Fed. R. Civ. P. 4(c)(3), (d)(1), and (j)(2) Plaintiff shall complete and return to the Clerk of Court signed,

**original "U.S. Marshal-285" forms for remaining Defendant Officer Crocker, as well as for the Chief Executive Officer of the City of Wilmington, Delaware. Plaintiff has provided the Court with copies of the Complaint (D.I. 2) for service upon remaining Defendant and the Chief Executive Officer of the City of Wilmington, Delaware. Plaintiff is notified that the United States Marshal will not serve the Complaint until all "U.S. Marshal 285" forms have been received by the Clerk of Court. Failure to provide the "U.S. Marshal 285" forms for remaining Defendant and the Chief Executive Officer within 120 days from the date of this Order may result in the Complaint being dismissed or Defendant being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

3. Upon receipt of the form(s) required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the Complaint (D.I. 2), this Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendant so identified in each 285 form.

4. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said Defendant and said Defendant shall be required to bear the cost

related to such service, unless good cause is shown for failure to sign and return the waiver pursuant to Fed. R. Civ. P. 4(d)(1) and (2).

5. Pursuant to Fed. R. Civ. P. 4(d)(3), a Defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the Complaint within **sixty (60) days** from the date upon which the Complaint, this Order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

6. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

7. **NOTE: \*\*\*** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a). **\*\*\***

8. **NOTE: \*\*\*** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without

prejudice, with leave to refile following service. \*\*\*

July 15, 2009  
DATE

Joseph J. Fawcett  
UNITED STATES DISTRICT JUDGE