

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IVAN L. MENDEZ, :  
 :  
 Plaintiff, :  
 :  
 v. : Civ. Action No. 08-244-JJF  
 :  
 COUNSELOR LINDA KEMP, :  
 LT. SEACORD, FIRST :  
 CORRECTIONAL MEDICAL, :  
 WARDEN THOMAS CARROLL, :  
 and JOHN DOE, :  
 :  
 Defendants. :

---

Ivan L. Mendez, Pro se Plaintiff, James T. Vaughn Correctional Center, Smyrna, Delaware.

---

**MEMORANDUM OPINION**

November 18, 2008  
Wilmington, Delaware

Farnan, District Judge



Plaintiff Ivan L. Mendez ("Mendez"), an inmate at the James T. Vaughn Correctional Center ("VCC"), formerly known as the Delaware Correctional Center, ("DCC"), Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983. Plaintiff proceeds pro se and has been given leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (D.I. 4.)

For the reasons discussed below, the Court will dismiss the Complaint as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. 28 1915(e)(2)(B) and 28 U.S.C. § 1915A(b)(1). Plaintiff will be given leave to amend.

#### **I. BACKGROUND**

Plaintiff alleges that on March 14, 2008, Defendants Linda Kemp ("Kemp") and Lt. Seacord ("Seacord") tried to remove him from protective custody knowing that a fellow inmate had thrown urine on him. He alleges that Kemp and Seacord knew that he had been assaulted on April 20, 2006 and knew of his medical condition.

Plaintiff alleges that in 2006, John Doe ("Doe") and other non-parties tried to remove him from protective custody, and on June 22, 2007, Seacord and other non-parties tried to remove him from protective custody. He alleges this attempt to remove him

from protective custody is similar to the time that Defendants former Warden Thomas Carroll ("Carroll"), First Correctional Medical ("FCM"), Doe and other non-parties moved him from protective custody to medium security without his consent or agreement and he was assaulted in the medium security building. Plaintiff alleges that there is a "widely spread plot to kill him." While not clear, it appears that Plaintiff wants to remain in protective custody. His prayer for relief states, "Honorable Master as you know it too what I have requested always." (D.I. 2, ¶ 21.)

## 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).

In performing its screening function under § 1915(e)(2)(B), the Court applies the standard applicable to a motion to dismiss

under Fed. R. Civ. P. 12(b)(6). Fullman v. Pennsylvania Dep't of Corr., No. 4:07CV-000079, 2007 WL 257617 (M.D. Pa. Jan. 25, 2007) (citing Weiss v. Cooley, 230 F.3d 1027, 1029 (7<sup>th</sup> Cir. 2000)). 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, -U.S.-, 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, -U.S.-, 127 S.Ct. 1955, 1964 (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 1965 (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, 127 S.Ct. at 1965 n.3). Therefore, "stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest' the required element." Id. at 235 (quoting Twombly, 127 S.Ct. at 1965 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. However, fantastical or delusional claims that are clearly baseless are insufficient to withstand the Court's evaluation for frivolity dismissal under § 1915(e)(2)(B)(i). See Denton v. Hernandez, 504 U.S. 25, 33 (1992); Neitzke v. Williams, 490 U.S. 319, 327 (1989). 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, -U.S.-, 127 S.Ct. 2197, 2200 (2007) (citations omitted).

### **III. ANALYSIS**

Initially, the Court notes that inmates have "no legitimate statutory or constitutional entitlement" to any particular custodial classification even if a new classification would cause that inmate to suffer a "grievous loss." Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976). Moreover, neither Delaware law nor

Delaware Department of Correction regulations create a liberty interest in a prisoner's classification within an institution. See Del. Code Ann 11, § 6529(e). "'As long as the conditions or degree of confinement to which [a] prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.'" Hewitt v. Helms, 459 U.S. 460, 468 (1983) (quoting Montanye v. Haymes, 427 U.S. 236, 242 (1976)).

Additionally, the Delaware Supreme Court has recognized that prison officials have discretion to house inmates at the facilities they choose. Walls v. Taylor, 856 A.2d 1067, 2004 WL 906550 (Del. 2004) (table) (citing Brathwaite v. State, No. 169, 2003 (Del. Dec. 29, 2003)). Furthermore, the United States Supreme Court has held that an inmate has no due process right to be incarcerated in a particular institution whether it be inside the state of conviction, or outside that state. Olim v. Wakinekona, 461 U.S. 238, 251(1983). Accordingly, the claim based upon an attempt to transfer Plaintiff from protective custody has no arguable basis in law or in fact.

To the extent that Plaintiff attempts to allege a failure to protect claim against Carroll, FCM, and Doe, he must allege that (1) he is incarcerated under conditions posing a substantial risk of serious harm (the objective element); and (2) prison officials

acted with deliberate indifference, i.e., that prison officials knew of and disregarded an excessive risk to inmate health or safety (the subjective element). See Farmer v. Brennan, 511 U.S. 825, 833-34 (1994); see also Griffin v. DeRosa, 153 Fed. Appx. 851, 2005 WL 2891102 (3d Cir. 2005). The Complaint contains no allegations Defendants acted with deliberate indifference. For the above reasons, the Court will dismiss the claim for failure to state a claim upon which relief may be granted and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

#### **IV. CONCLUSION**

The Complaint will be dismissed as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Plaintiff will be given leave to file an Amended Complaint only as to the failure to protect issue. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IVAN L. MENDEZ, :  
 :  
 Plaintiff, :  
 :  
 v. : Civ. Action No. 08-244-JJF  
 :  
 COUNSELOR LINDA KEMP, :  
 LT. SEACORD, FIRST :  
 CORRECTIONAL MEDICAL, :  
 WARDEN THOMAS CARROLL, :  
 and JOHN DOE, :  
 :  
 Defendants. :

**ORDER**

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. The Complaint is **DISMISSED** without prejudice as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

2. Plaintiff is given leave to **AMEND** only as to the failure to protect issue. The Amended Complaint shall be filed within **thirty (30) days** from the date of this Order. If an Amended Complaint is not filed within the time allowed, then the case will be **CLOSED**.

11-18-08

DATE

Joseph D. Tamm  
UNITED STATES DISTRICT JUDGE