

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARQUIS ROBINSON,)
)
 Plaintiff,)
)
 v.) Civ. No. 08-420-SLR
)
 NEWS JOURNAL, TERRI SANGINITA,)
 STATE/WILMINGTON POLICE)
 DEPARTMENT, and CPL. JEFF)
 WHITMARSH,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 14th day of September, 2008, having screened the case pursuant to 28 U.S.C. § 1915 and § 1915A;

IT IS ORDERED that the case is dismissed 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), for the reasons that follow:

1. **Background.** Plaintiff Marquis Robinson (“plaintiff”), filed this civil rights action pursuant to 42 U.S.C. § 1983 when he was an inmate at the Howard R. Young Correctional Institution (“HRYCI”), Wilmington, Delaware. (D.I. 2, 4, 6, 9) He has since been released. Plaintiff appears pro se and has been granted leave to proceed without prepayment of fees.

2. **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).

3. 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 (7th 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); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). 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) (citations omitted)); Fed. R. Civ. P. 8.

4. 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

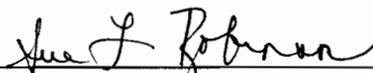
the complaint are true (even if doubtful in fact).” *Id.* (citations omitted). Plaintiff is required to make a “showing” rather than a blanket assertion of an entitlement to relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008). “[W]ithout some factual allegation in the complaint, 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. 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).

5. **Discussion.** The basis of plaintiff’s claim is libel and defamation of character. He alleges that defendant *The News Journal* (“*News Journal*”) and defendant Cpl. Jeff Whitmarsh (“Whitmarsh”) of the Wilmington Police Department stated that he was involved in a shoplifting spree with four other individuals, when he was not. Plaintiff acknowledges that he was involved in one incident, but not two others as reported. He seeks a personal apology and compensatory damages

6. **Libel/Defamation.** Claims of slander and defamation are not cognizable under § 1983. Tort claims, such as defamation of character and slander, are not

properly included in a civil rights action under 42 U.S.C. § 1983. *Daniels v. Williams*, 474 U.S. 327, 332 (1986) (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976)) (“We have previously rejected reasoning that ‘would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.’” See also *Hernandez v. Hunt*, Civ.A. No. 89-4448, 1989 WL 66634 (E.D.Pa. Jun 16, 1989). Because plaintiff’s claims of slander and defamation are not cognizable under § 1983, they are dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). Plaintiff’s remedy lies in state court.

7. **Conclusion.** Based upon the foregoing analysis, the complaint is dismissed for failure to state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment of the complaint would be futile. See *Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976).


UNITED STATES DISTRICT JUDGE