

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JAMES ARTHUR WILSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 00-378-GMS  
 )  
 DET. DANIEL J. MCKEOWN, DET. )  
 ANTONIO DIGIROLOMO, DET. )  
 WILLIAM KENT, OFFICER JASON )  
 PIERS, DET. KIMBERLY COOK, )  
 DET. R. DADDIO, SGT. PATRICK )  
 OGDEN, LAWRENCE COLLINS )  
 D.E.A., F.B.I. LIAM SULLIVAN, )  
 and PAROLE/PROBATION KARRY )  
 BITTENBENDER, )  
 )  
 Defendants. )

**MEMORANDUM AND ORDER**

James Arthur Wilson ("Wilson"), is a pro se litigant who is currently incarcerated at the Sussex Correctional Institution ("SCI") located in Georgetown, Delaware. His SBI number is 163663. He 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 Wilson is eligible for pauper status. The court denied Wilson leave to

proceed in forma pauperis on April 7, 2000 because Wilson had filed at least three previous civil rights complaints as a prisoner which were dismissed as frivolous, malicious or for failure to state a claim upon which relief may be granted. (D.I. 1) The court ordered Wilson to pay the \$150.00 filing fee within thirty days or the case would be dismissed. Wilson paid \$150 on April 28, 2000.

Although Wilson paid the full filing fee, he is still subject to the screening requirements of 28 U.S.C. § 1915A. Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A (b) (1). If the court finds the Wilson's complaint falls under any one of the exclusions listed in the statute, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. § 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 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 standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).<sup>1</sup> As discussed below, Wilson's claims have no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b) (1).

## **II. DISCUSSION**

### **A. The Complaint**

Wilson alleges that his arrest in 1999 was unlawful. (D.I. 2) Specifically, he alleges that the defendant police officers harassed him "[d]uring the entire year or 1998" by "pulling him

---

<sup>1</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 frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

over" for traffic violations. (Id. at 4) The gravamen of Wilson's complaint is that all of the defendants set him up and that his arrest and subsequent parole revocation were unlawful. (Id.) Wilson alleges that the charges against him are false and that the defendants tricked him into cooperating with them. (Id. at 11) Wilson requests that the court terminate his parole and release him from incarceration. He also requests that the court award him damages in the amount of three million dollars, plus lost wages, and costs. He further requests that the court issue a temporary restraining order against the defendants. (Id. at 13) Wilson has also filed a Motion for Appointment of Counsel. (D.I. 8) Because the court finds that Wilson's claims are frivolous within the meaning of 28 U.S.C. § 1915A(b)(1), his Motion for Appointment of Counsel shall be denied as moot.

## **B. DISCUSSION**

### **1. Wilson's Habeas Claims**

Although Wilson has cast his allegations in terms of his arrest, he is in essence attacking his parole revocation and sentence. Wilson's sole federal remedy challenging the fact or duration of his confinement is by way of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973). A plaintiff cannot recover damages under § 1983 for alleged false imprisonment unless he proves that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state

tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 487 (1994). Wilson did file a habeas petition regarding his parole revocation. However, this court dismissed the petition without prejudice because of Wilson's failure to exhaust his state administrative remedies. See Wilson v. Williams, Civil Action No. 00-592-GMS (D. Del dismissed February 5, 2002). Wilson has not alleged that his conviction or sentence was reversed or invalidated by any means required under Heck. Consequently, Wilson's unlawful arrest claim lacks an arguable basis in law or in fact. Therefore, the court finds that Wilson's unlawful arrest claim is frivolous within the meaning of 28 U.S.C. § 1915A(b)(1) and shall be dismissed. However, such dismissal shall be without prejudice.

## **2. Wilson's Conspiracy Claim**

Wilson also alleges that defendants Brina, Cook, Daddio, Piers, Kent, Di Griolomo, McKeown, and Bittenbender conspired to bring false charges against him in order to have his parole revoked. He further alleges that while the charges were eventually dropped, his parole was still revoked. (D.I. 2 at 12) Other than reciting the facts leading up to his arrest, Wilson has offered no credible factual allegations of any agreement to commit an unlawful act combined with an intent to deprive Wilson of his Civil Rights on the part of these defendants. Kalmanovitz v. G.

Heileman Brewing Co., 595 F.Supp. 1385, 1400 (D. Del 1984) ("A general averment of conspiracy or collusion without alleging the facts which constituted such conspiracy is a conclusion of law and is insufficient."). Consequently, Wilson's conspiracy claim against defendants Brina, Cook, Daddio, Piers, Kent, Di Griolomo, McKeown, and Bittenbender, has no arguable basis in law or in fact. Therefore his conspiracy claim against defendants Brina, Cook, Daddio, Piers, Kent, Di Griolomo, McKeown, and Bittenbender is frivolous and shall be dismissed pursuant to § 1915A(b) (1).

NOW THEREFORE, IT IS HEREBY ORDERED this 24<sup>th</sup> day of July 2003, that:

1. Wilson's Motion for Appointment of Counsel (D.I. 8) is DENIED as moot.

2. Wilson's unlawful arrest claim is DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915A(b) (1).

3. Wilson's conspiracy claim against defendants Brina, Cook, Daddio, Piers, Kent, Di Griolomo, McKeown, and Bittenbender is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915A(b) (1).

5. The clerk shall mail a copy of the court's Memorandum and Order to Wilson.

Gregory M. Sleet  
United States District Judge