IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DEVON ANTHONY BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 01-786-KAJ
	)	
STATE OF DELAWARE, SUPERIOR COURT, PUBLIC DEFENDER'S OFFICE, DEPARTMENT OF CORRECTIONS, and OFFICE OF PROBATION AND PAROLE,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

I. STANDARD OF REVIEW

Plaintiff Devon Anthony Brown ("Brown"), SBI #244348, is a pro se litigant who was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF"), now known as the Howard R. Young Correctional Institution, in Wilmington, Delaware at the time he filed this complaint. Brown 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.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the Court must determine whether the Brown is eligible for pauper status. The Court granted Brown leave to proceed in forma pauperis on November 27, 2001, and January 8, 2002, ordered him to pay an initial partial filing fee of $5.50 within thirty days, or the case would be dismissed. On February 21, 2002, the Court dismissed Brown's complaint without prejudice for failure to pay the initial partial filing fee. On February

28, 2002, Brown filed a motion for reconsideration. On March 2, 2002, Brown filed a notice of appeal. On May 7, 2002, the Court granted Brown's motion for reconsideration and ordered him to pay the $5.50 initial partial filing fee within thirty days, or the case would be dismissed. On June 28, 2002, the Court dismissed the complaint because Brown failed to pay the $5.50 initial partial filing fee. On July 5, 2002, the United States Court of Appeals for the Third Circuit dismissed Brown's appeal for lack of jurisdiction. On July 8, 2002, Brown paid the $5.50 initial partial filing fee. On July 10, 2002, Brown filed a motion to reopen this case. (D.I. 26)

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).[1] If the Court finds Brown'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

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[1] 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).

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)(citing Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)). 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 when "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-521 (1972)(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).[2] 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, Brown's claim has 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

Brown has named the following Defendants in his complaint: the State of

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[2] 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).

Delaware, the Office of the Public Defender, the Office of Probation and Parole, and the Department of Correction. (D.I. 2 at 3) Brown appears to be alleging that he was convicted and sentenced in May 1993 for possession of cocaine. (D.I. 2 at 4) Brown also appears to be alleging that at that time, he was also sentenced regarding four separate violations of probation. (Id.) The exact term of Brown's sentence is not clear from the complaint. Brown appears to be alleging that he was sentenced to four years of incarceration. Brown also appears to be alleging that he served four years at Level V, and three years at decreasing levels of supervision. (Id.)

Brown also alleges that on September 10, 1999, he was sentenced to two years incarceration at Level V. (Id.) Brown alleges that this sentence was modified on May 31, 2000, and that he was released on June 6, 2000. (Id.) However, it is unclear from the complaint whether this sentence was related to the sentence imposed in May 1993, or, if this sentence concerns an entirely different set of charges. (Id.) Brown further alleges that he filed a complaint regarding his May 1993 sentence with the State Superior Court, the Office of Disciplinary Council and the Judicial Ethics Committee. (Id.) Brown requests that the Court award him unspecified compensatory damages for the time he was held at Level V past his release date. (Id. at 6)

B. Sovereign Immunity

Brown's claims against the named Defendants must fail. The Delaware Superior Court is part of the judicial branch of the State of Delaware, created by the Delaware Constitution. Del. Const. Art IV, § 1. 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. ANN. § 4602. The Department of Correction

is also an agency of the State of Delaware, created by the General Assembly to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community. 11 Del. C. ANN. § 6502 (a). The Office of Probation and Parole is another agency of the State of Delaware, created by the General Assembly to provide a uniformly organized system of constructive rehabilitation by restricting liberty of offenders within the community, rather than in a correctional institution. 11 Del. C. ANN. § 4301. Thus, by naming the Superior Court, the Office of the Public Defender, the Department of Correction, and the Office of Probation and Parole as Defendants, Brown has, in essence, brought his claim solely against the State of Delaware.

To state a claim under 42 U.S.C. § 1983, Brown 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 v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981) (overruled in part on other grounds not relevant here by, Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). "[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Ospina v. Department of Corrections, State of Delaware, 749 F.Supp. 572, 577 (D. Del. 1991)(citing Wills v. Michigan Dept. 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. Department of Corrections, 749 F.Supp. at 579. Consequently, Brown's claim against the State of Delaware, has no arguable basis in law or in fact. Therefore, Brown's complaint is frivolous and shall be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, at Wilmington, Delaware this 6th day of May, 2005, IT IS HEREBY ORDERED that:

Brown's Motion to Reopen the case (D.I. 7) is GRANTED, and

Brown's complaint is dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

UNITED STATES DISTRICT JUDGE