


Farnan, District Judge.

Plaintiff, Deveal L. Bacon, a pro se litigant, has filed this action pursuant to 42 U.S.C. § 1983. For the reasons discussed, the Court will dismiss Plaintiff's forgery claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). The Court, however, will not dismiss Plaintiff's remaining claims for violations of the First Amendment freedom of speech and the Fourteenth Amendment right to access the courts.

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 the plaintiff is eligible for pauper status pursuant to 28 U.S.C. § 1915. In this case, the Court granted Plaintiff leave to proceed in forma pauperis and assessed an initial partial filing fee of \$7.87. Plaintiff filed the required form authorizing the payment of fees from his prison account.

Once Plaintiff's eligibility for pauper status has been determined, the Court must "screen" the Complaint to determine whether it 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) and 1915A(b)(1).¹ If the Court finds Plaintiff's

¹These 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

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) and 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 the 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 United States Supreme Court has held that the term "frivolous" as used in Section 1915(e)(2)(B) "embraces not only

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).

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 Section 1915 (e) (2) (B) if it "lacks an arguable basis either in law or in fact." Id.

II. DISCUSSION

By his Complaint, Plaintiff alleges that his incoming and outgoing legal mail have been withheld or returned to the sender, that he has not been permitted to witness the opening of his legal mail, and that he has had to use other parties to send and receive legal mail. Plaintiff further contends that Superior Court Judge Del Pesco ordered verified hand-delivery to Plaintiff of an opinion and that someone at the Delaware Correctional Center ("DCC") forged the incorrect date on the envelope. The Court liberally construes Plaintiff's Complaint as alleging forgery and violations of the First Amendment freedom of speech and Fourteenth Amendment right to access the courts.

The Court concludes that Plaintiff has failed to establish a claim for forgery under Section 1983, and therefore, will dismiss the claim pursuant to 28 U.S.C. §§ 1915(e) (2) (B) and 1915A(b) (1).

²Neitzke 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 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).

In order to establish a claim under Section 1983, a plaintiff must show that (1) the conduct complained of was committed by a person acting under color of state law and (2) the conduct deprived the plaintiff of a federally-secured right. Moore v. Tartler, 986 F.2d 682, 685 (3d Cir. 1993). Allegations of forgery implicate only state law and not federally-secured rights. Taylor v. Denniston, 111 Fed. Appx. 864, 865 (8th Cir. 2004); DeAngelis v. Lynch, No. 87-4610, 1988 U.S. Dist. LEXIS 2142, at *2 (E.D. Pa. March 15, 1988). Accordingly, the Court will dismiss Plaintiff's forgery claim for failure to state a claim under Section 1983.

III. CONCLUSION

Because Plaintiff has failed to establish a claim for forgery under Section 1983, the Court will dismiss that claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). The Court will not dismiss Plaintiff's remaining claims for violations of the First Amendment freedom of speech and Fourteenth Amendment right to access the courts, because the Court concludes that they are not frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DEVEARL L. BACON, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 05-714-JJF
 :
 WARDEN CARROLL, CAPTAIN :
 SAGERS, and LT. FORBES, :
 :
 Defendants. :

ORDER

At Wilmington, this 21 day of November 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff's claim for forgery is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).
2. Plaintiff's claims for violations of the First Amendment freedom of speech and Fourteenth Amendment right to access the courts are not dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).
3. The Clerk shall mail a copy of this Order and the Memorandum Opinion to Plaintiff.
4. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff shall complete and return to the Clerk of the Court an **original** "U.S. Marshal 285" form for **each Defendant** as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to Del. Code Ann. tit. 10 § 3103(c). **Additionally, Plaintiff shall**

provide the Court with three copies of the Complaint (D.I. 2) for service upon the Defendants. Further, 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 the Court. Failure to provide the "U.S. Marshal 285" forms for each Defendant within 120 days of this Order may result in the Complaint being dismissed or Defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

5. Upon receipt of the form(s) required by paragraph 4 above, the United States Marshal shall forthwith serve a copy of the Complaint (D.I. 2), this Memorandum Opinion and Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the Defendants so identified in each 285 form.
6. 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(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.
7. 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.

8. No communication, including pleadings, briefs, statements 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. The Clerk is instructed not to accept any such document unless accompanied by proof of service.


UNITED STATES DISTRICT JUDGE