

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD G. JOHNSON, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 08-196-JJF  
 :  
 OFFICER BINGNEAR, SUPERVISOR :  
 OFFICER RUBEN MARTINEZ, :  
 OFFICER DEBORAH PROVENZA, :  
 STATE OF DELAWARE, and NEW :  
 CASTLE COUNTY POLICE :  
 DEPARTMENT, :  
 :  
 Defendants. :

---

Ronald G. Johnson, Pro se Plaintiff. Wilmington, Delaware.

---

**MEMORANDUM OPINION**

July | , 2008  
Wilmington, Delaware

Farnan, District Judge



Plaintiff Ronald G. Johnson ("Plaintiff"), a former inmate at the Delaware Correctional Center ("DCC"), filed this civil rights action pursuant to 42 U.S.C. § 1983. He appears pro se and was granted in forma pauperis status pursuant to 28 U.S.C. § 1915. (D.I. 6)

For the reasons discussed below, the Court will dismiss the claims against the State of Delaware as it is immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) and will allow Plaintiff to proceed against the remaining Defendants.

#### **I. 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); 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) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)); 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. 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).

## **II. DISCUSSION**

Plaintiff alleges Defendant police officers charged him with felonies knowing the crimes were misdemeanors to illegally incarcerate him and increase his bail, and knowing he was unable to afford the costs to keep him in jail longer. Plaintiff alleges a lack of probable cause for arrest, false arrest, and malicious prosecution. He also alleges that it is the practice of the New Castle County Police Department to "over charge" people by charging felonies for misdemeanor offenses, and that it

has a policy that in every domestic dispute someone must be arrested and the targets are black males. Plaintiff notified the Court on April 21, 2008, that he was no longer incarcerated. He seeks compensatory damages.

Plaintiff names the State of Delaware as one of the Defendants. The Eleventh Amendment of the United States Constitution protects an unconsenting state or state agency from a suit brought in federal court by one of its own citizens, regardless of the relief sought. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984); Edelman v. Jordan, 415 U.S. 651 (1974). The State has not waived its immunity from suit in federal court, and although Congress can abrogate a state's sovereign immunity, it did not do so through the enactment of 42 U.S.C. § 1983. Brooks-McCollum v. Delaware, 213 Fed. Appx. 92, 94 (3d Cir. 2007) (citations omitted). Consequently, Plaintiff's claim against the State has no arguable basis in law or in fact as it is immune from suit, and therefore, will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

### **III. CONCLUSION**

For the reasons discussed, the claims against the State of Delaware will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) as it is immune from suit. Plaintiff will be allowed to proceed against the remaining Defendants. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD G. JOHNSON, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 08-196-JJF  
 :  
 OFFICER BINGNEAR, SUPERVISOR :  
 OFFICER RUBEN MARTINEZ, :  
 OFFICER DEBORAH PROVENZA, :  
 STATE OF DELAWARE, and NEW :  
 CASTLE COUNTY POLICE :  
 DEPARTMENT, :  
 :  
 Defendants. :

**ORDER**

NOW THEREFORE, at Wilmington this / day of July, 2008, IT  
IS HEREBY ORDERED that:

1. The Clerk of the Court shall cause a copy of this Order  
to be mailed to Plaintiff.

2. Plaintiff's claim against Defendant State of Delaware is  
**DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B) and §  
1915A(b)(1), and it is **DISMISSED** as a Defendant in the case.

3. The Court has identified what appear to be cognizable  
claims within the meaning of 28 U.S.C. § 1915A(b) against  
Defendants Officer Bingnear, Supervisor Officer Ruben Martinez,  
Officer Deborah Provenza, and the New Castle County Police  
Department. Plaintiff is allowed to **PROCEED** against these  
Defendants.

IT IS FURTHER ORDERED that:

1. Pursuant to Fed. R. Civ. P. 4(c)(2), 4(I), and 4(j),

Plaintiff shall provide the Court with **original** "U.S. Marshal-285" forms for **remaining Defendants Officer Bingnear, Supervisor Officer Ruben Martinez, Officer Deborah Provenza, and the New Castle County Police Department**, as well as for the **Chief Executive Officer for New Castle County, Delaware**. Plaintiff has provided the Court with copies of the Complaint (D.I. 2) for service upon the remaining Defendants and the Chief Executive Officer for New Castle County, Delaware. 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 remaining Defendant and the Chief Executive Officer for New Castle County, Delaware within 120 days from the date of this Order may result in the Complaint being dismissed or Defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

2. Upon receipt of the form(s) required by paragraph 1 above, the United States Marshal shall forthwith serve a copy of the Complaint (D.I. 2), this Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendant(s) so identified in each 285 form.

3. 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 Defendants pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendants shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

4. 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.

5. No communication, including pleadings, briefs, statement 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.

6. **NOTE: \*\*\*** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a). **\*\*\***

7. **NOTE: \*\*\*** Discovery motions and motions for appointment



of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. \*\*\*

  
UNITED STATES DISTRICT JUDGE