

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RONALD G. JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 10-826-LPS
	:	
WARDEN PHIL MORGAN, et al.,	:	
	:	
Defendants.	:	

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

MEMORANDUM OPINION

May 26, 2011
Wilmington, Delaware



STARK, U.S. District Judge:

I. INTRODUCTION

Plaintiff Ronald G. Johnson (“Plaintiff”), filed this action pursuant to 28 U.S.C. § 1651 alleging violations of his civil rights.¹ At the time he filed the Complaint/Petition, he was housed at the Howard R. Young Correctional Institution (“HRYCI”) in Wilmington, Delaware. He has since been released. He appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 6) The Court proceeds to review and screen the Complaint/Petition pursuant to 28 U.S.C. § 1915 and § 1915A.

II. BACKGROUND

Plaintiff alleges that Defendants failed to release him from prison subsequent to the resolution of his criminal case on September 24, 2010 by the Court of Common Pleas for the State of Delaware in and for New Castle County (“Court of Common Pleas”). Plaintiff either spoke, or wrote, to Defendants advising them of his release, but no one responded and he remained held at the HRYCI. (D.I. 2) Plaintiff advised the Court on October 4, 2010 that he was no longer incarcerated. (D.I. 4) Plaintiff seeks compensatory damages for Defendants’ failure to release him within twenty-four hours or a reasonable time of forty-eight hours, depending on the circumstances.

III. LEGAL STANDARDS

This Court must dismiss, at the earliest practicable time, certain *in forma pauperis* and prisoner actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a

¹Pursuant to 42 U.S.C. § 1983, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions); 28 U.S.C. § 1915A (actions in which prisoner seeks redress from governmental defendant); 42 U.S.C. § 1997e (prisoner actions brought with respect to prison conditions). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *See Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). 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*, 551 U.S. at 94 (internal quotation marks omitted).

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). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989; *see also Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the Court must grant Plaintiff leave to amend his complaint, unless amendment would be inequitable or futile. *See Grayson v. Mayview State*

Hosp., 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Iqbal*, 129 S.Ct. at 1949. When determining whether dismissal is appropriate, the Court conducts a two-part analysis. *See Fowler v. UPMC Shadyside*, 578 F.3d 203,210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *See id.* The Court must accept all of the Complaint’s well-pleaded facts as true, but may disregard any legal conclusions. *See id.* at 210-11.

Second, the Court must determine whether the facts alleged in the Complaint are sufficient to show that has a “plausible claim for relief.” *Id.* at 211. In other words, the Complaint must do more than allege Plaintiff’s entitlement to relief; rather, it must “show” such an entitlement with its facts. *Id.* A claim is facially plausible when its factual content allows the Court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *See Iqbal*, 129 S.Ct. at 1949. The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

IV. DISCUSSION

Plaintiff names as defendants the Delaware Bureau of Prisons (“BOP”) and the HRYCI. The Eleventh Amendment provides both of these Defendants immunity. *See MCI Telecom.*

Corp. v. Bell Atl. of Pa., 271 F.3d 491, 503 (3d Cir. 2001). 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 *Board of Trustees of the Univ. of Al. v. Garrett*, 531 U.S. 356, 363 (2001); *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. See *Quern v. Jordan*, 440 U.S. 332, 340-41 (1979) (section 1983 was not intended to abrogate State's Eleventh Amendment immunity); *Brooks-McCollum v. Delaware*, 213 F. App'x 92, 94 (3d Cir. Jan 11, 2007) (not published) (stating Delaware has not waived its immunity from suit in federal court).

The BOP and HYRCI, as agencies of the State of Delaware are immune from suit. Therefore, the Court will dismiss the claims against them pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

V. CONCLUSION

For the reasons discussed, the Court will dismiss the claims against the BOP and the HYRCI pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Plaintiff will be allowed to proceed against the remaining Defendants. See e.g., *Sample v. Diecks*, 885 F.2d 1099 (3d Cir. 1989) (stating prisoner has right to be released from his sentence, so detention beyond termination of sentence may be in violation of Eighth Amendment.)

An appropriate Order follows.

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v.	:	Civ. No. 10-826-LPS
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WARDEN PHIL MORGAN, et al.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 26th day of May, 2011, consistent with the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that:

1. The claims against the Delaware Bureau of Prisons and the Howard R. Young Correctional Institution are DISMISSED, as these defendants are immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

3. The Court has identified what appear to be cognizable and non-frivolous claims within the meaning of 28 U.S.C. § 1915A against Defendants Warden Phil Morgan, Bureau of Prison Records Supervisor, Howard R. Young Correctional Institution Supervisor and Manager of Records, Lt. Fields, Sgt. Lee, Lt. Kennedy, and Cpl. Soulette on the unlawful detention claim.

IT IS FURTHER ORDERED that:

1. The Clerk of Court shall cause a copy of this Order to be mailed to Plaintiff.
2. Pursuant to Fed. R. Civ. P. 4(c)(3) and (d)(1), Plaintiff shall provide the Court with “USM-285” forms for the **remaining Defendants Warden Phil Morgan, Bureau of Prison Records Supervisor, Howard R. Young Correctional Institution Supervisor and Manager**

of Records, Lt. Fields, Sgt. Lee, Lt. Kennedy, and Cpl. Soulette, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to 10 DEL. CODE § 3103(c). Additionally, Plaintiff shall provide the Court with copies of the Complaint for service upon each remaining Defendant and the Attorney General of the State of Delaware. (D.I. 2) Plaintiff is notified that the United States Marshal Service (“USMS”) will not serve the Complaint until all “U.S. Marshal 285” forms have been received by the Clerk of Court. Failure to provide complete “U.S. Marshal 285” forms and copies of the Complaint for the remaining Defendants and the Attorney General 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).

3. Upon receipt of the form(s) required by paragraph 2 above, the USMS 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 each of the defendants so identified in each 285 form.

4. A defendant to whom copies of the Complaint, this Order, the “Notice of Lawsuit” form, and the “Return of Waiver” form have been sent, pursuant to Fed. R. Civ. P. 4(d)(1), has thirty days from the date of mailing to return the executed waiver form. Such a defendant then has sixty days from the date of mailing to file its response to the complaint. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant residing outside this jurisdiction has an additional thirty days to return the waiver form and to respond to the complaint.

5. A defendant who does not timely file the waiver form shall be personally served and shall bear the costs related to such service, absent good cause shown, pursuant to Fed. R.

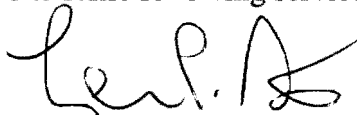
Civ. P. 4(d)(2). **A separate service order will issue in the event a defendant does not timely waive service of process.**

6. 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.

7. **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). *******

8. **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