

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JULIAN PETTY, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 19-445-RGA
 :
 MS. CAROLE EVANS and :
 MS. MOSLEY, :
 :
 Defendants. :

Julian Petty, Howard R. Young Correctional Institution, Wilmington, Delaware.
Pro Se Plaintiff.

MEMORANDUM OPINION

October 15, 2019
Wilmington, Delaware


ANDREWS, U.S. District Judge:

Plaintiff Julian Petty, an inmate at the Howard R. Young Correctional Institution in Wilmington, Delaware, filed this action pursuant to 42 U.S.C. § 1983.¹ (D.I. 3). Plaintiff appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 5). The Court screens and reviews the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(a).

BACKGROUND

Plaintiff completed the Headstart Program that he alleges opened an opportunity for him to be classified as a Level 5 inmate or a mandatory worker completing his sentence at the Plummer Community Corrections Center in Wilmington, Delaware. On October 18, 2018, Dr. August, the head of mental health at the HYRCI examined Plaintiff. Plaintiff was also seen by Defendant Ms. Mosley, a counselor at Plummer who asked him a few questions. Plaintiff alleges that several counselors from the Headstart Program also spoke to Plaintiff, and they gave a good report as to his abilities. Plaintiff alleges that Mosley told Plaintiff he would have to meet with Plummer's Warden, Defendant Carole Evans. Plaintiff waited for about an hour and was again seen by Mosley who told Plaintiff he would need a mental health evaluation before anything else could transpire.

Plaintiff was taken back to the HYRCI. Upon his return, Dr. Gen, a mental health physician, looked through Plaintiff's chart and saw the evaluation that Dr. August had

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

performed. Dr. Gen advised Plaintiff she would make some telephone calls to determine why he had been wrongfully returned to the HYRCI. He was housed on a pod at the HRYCI “notorious for being a trouble maker housing area.”

Plaintiff alleges that Defendants lied about the necessity for Plaintiff to undergo a mental health evaluation. Plaintiff alleges that being lied to and moved around under false pretenses violated his constitutional rights and left him with a constant feeling of being unsafe.

Plaintiff seeks an injunction to return him for a case review as well as compensatory damages.

SCREENING OF COMPLAINT

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) if “the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.” *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013). *See also* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions); 28 U.S.C. § 1915A (actions in which prisoner seeks redress from a governmental defendant). 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. *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 v. Pardus*, 551 U.S. at 94.

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) and § 1915A(b)(1), 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 U.S. at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) and § 1915A(b)(1) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *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 and 1915A, 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*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, 574 U.S. 10 (2014). A complaint may not be dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 10.

A court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth;

and (3) when there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Connelly v. Lane Const. Corp.*, 809 F.3d 780,787 (3d Cir. 2016). Elements are sufficiently alleged when the facts in the complaint “show” that the plaintiff is entitled to relief. *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

DISCUSSION

It is well established that an inmate does not possess a liberty interest arising from the Due Process Clause in assignment to a particular custody level or security classification or a place of confinement. See *Wilkinson v. Austin*, 545 U.S. 209, 221-22 (2005) (Constitution does not give rise to liberty interest in avoiding transfer to more adverse conditions of confinement); *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983); *Meachum v. Fano*, 427 U.S. 215, 224-25 (1976). The custody placement or classification of state prisoners within the State prison system is among the “wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts.” *Meachum*, 427 U.S. at 225. “As long as the conditions or degree of confinement to which [a] prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate’s treatment by prison authorities to judicial oversight.” *Hewitt v. Helms*, 459 U.S. 460, 468 (1995) (quoting *Montanye v. Haymes*, 427 U.S. 236, 242 (1976)). See also *Sandin v. Conner*, 515 U.S. 472, 480 (1995). Therefore, Plaintiff can succeed under the Due Process Clause only if

state law or regulation has created a constitutionally-protected liberty interest in being assigned a certain classification upon the completion of prison programs. However, neither Delaware law nor Department of Correction regulations create a liberty interest in a prisoner's classification within an institution. See 11 Del. C. § 6529(e). In addition, Plaintiff's constitutional rights were not violated when Defendants allegedly lied to him or moved him under "false pretenses."

The Complaint does not raise a cognizable claim. Therefore, it will be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1).

CONCLUSION

For the above reasons, the Court will dismiss the Complaint as legally frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1). The Court finds that amendment is futile.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JULIAN PETTY,

Plaintiff,

v.

MS. CAROLE EVANS and
MS. MOSLEY,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:
:


Civil Action No. 19-445-RGA

ORDER

At Wilmington this 15 day of October, 2019, for the reasons set forth in the memorandum opinion issued this date;

IT IS ORDERED that:

1. The Complaint is **DISMISSED** as legally frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1). Amendment is futile
2. The Clerk of Court is directed to **CLOSE** the case.


UNITED STATES DISTRICT JUDGE