

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
(302) 255-0664

Harry Anderson  
116 Cunard Street  
Wilmington, Delaware 19804  
Plaintiff, *pro se*

Joseph C. Handlon, Esquire  
Deputy Attorney General  
Department of Justice  
820 North French Street  
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Attorney for Defendants Dawn Tingle, Carol Powell, William Thompson, and  
Perry Phelps

**Re: Harry Anderson v. Dawn Tingle, Carol Powell, William  
Thompson, and Perry Phelps  
C.A. No. 11C-04-027 RRC**

Submitted: July 6, 2011  
Decided: August 15, 2011

On Defendants' Motion to Dismiss.<sup>1</sup>

**GRANTED.**

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<sup>1</sup> In addition to his instant complaint, which was filed on April 26, 2011 (though dated March 2, 2011), Plaintiff subsequently filed another complaint in this Court on April 28, 2011 (though dated February 23, 2011), asserting essentially the same claims against Carol Powell, William Thompson, and Perry Phelps; he apparently omitted only Dawn Tingle, a defendant in the instant case, from the earlier dated (though later filed) case. Complaint, *Anderson v. Powell, et. al.*, N11C-03-208 (Del. Super. Apr. 28, 2011). Plaintiff's reasoning for this parallel filing is not explained. In any event, it seems that, rather than attempt properly to amend his complaint to reflect the desired additional defendant, Plaintiff simply (and improperly) opted to begin anew with a simultaneous action predicated on the same allegations. Plaintiff did not indicate, as is required, on the Case Information sheet filed with 11C-03-208 RRC, that there was a "related case" pending. The case of *Anderson v. Powell, et al.*, N11C-03-208 RRC has been re-assigned to the undersigned judge.

Dear Mr. Anderson & Mr. Handlon:

## **INTRODUCTION**

Defendants' Motion to Dismiss is predicated on Delaware Superior Court Rule of Civil Procedure 12(b)(6) and asserts that Plaintiff has failed to state a claim upon which relief can be granted. This case arises from Defendants alleged mishandling of Plaintiff Harry Anderson's ("Plaintiff") prison mail. Specifically, Plaintiff contends that Department of Correction's employee Dawn Tingle opened his legal mail in front of another prisoner, and that the improper handling of the Plaintiff's mail has been an ongoing situation, supposedly resulting in the dismissal of a pending post-conviction relief motion filed in Pennsylvania state court.<sup>2</sup> Thus, Plaintiff brought the instant action against Defendants based on an alleged constitutional violation of his right of access to the courts.<sup>3</sup>

On a motion to dismiss, the facts and all reasonable inferences flowing therefrom must be viewed in the light most favorable to Plaintiff; however, even when viewing the allegations of Plaintiff's Complaint in this light, Plaintiff has not established any conceivable set of circumstances and inferences wherein he could recover. Consequently, Plaintiff's Complaint has failed to state a claim upon which relief can be granted under Rule 12(b)(6).

Upon review of the facts, the law, and the parties' submissions, Defendant's Motion to Dismiss is **GRANTED**.<sup>4</sup>

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<sup>2</sup> Pltf.'s Complaint at 2-4.

<sup>3</sup> Pltf.'s Resp. at 4-5.

<sup>4</sup> In his related Complaint, N11C-03-208, Plaintiff alleges substantially identical claims; Plaintiff claimed that, while incarcerated, he did not receive legal mail from the Court of Common Pleas of Delaware County, Pennsylvania, "which caused [his] motion for post conviction collateral relief to be denied." Complaint, Anderson v. Powell, et. al., N11C-03-208 CHT (Del. Super. Apr. 28, 2011) at 2. *See also id.* at 4 ("As a proximate result of [the defendants' alleged mishandling of his mail] it has created a violation of the Plaintiff [sic] due process and 14<sup>th</sup> Amendment rights to equality, by the actions of the Defendants causing the Plaintiff [to] be denied access to the Court of Common Pleas of Media, Delaware County in Pennsylvania.").

## FACTS AND PROCEDURAL HISTORY

This case arises from an alleged violation of Plaintiff's constitutional rights by Defendants.<sup>5</sup> Plaintiff was at the relevant time an inmate at James T. Vaughn Correctional Center,<sup>6</sup> and Defendants are: correctional officer Dawn Tingle, the assistant manager of support services Carol Powell, the supervisor of the mail room, Sergeant William Thompson, and Warden Perry Phelps.<sup>7</sup>

Plaintiff specifically alleges two incidents in which his mail was mishandled by Defendants.<sup>8</sup> Plaintiff first contends that Defendant Dawn Tingle opened his legal mail in front of another inmate;<sup>9</sup> this mail was then delivered to Plaintiff three days after it had been mailed.<sup>10</sup> Plaintiff also contends that Defendants previously lost a legal mailing from the Court of Common Pleas of Delaware County, Pennsylvania, causing him to delay in

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<sup>5</sup> See generally Pltf.'s Complaint.

<sup>6</sup> Plaintiff's incarceration at the relevant time period apparently stems from his March 2006 plea of guilty to Second Degree Assault. See *Anderson v. State*, 2011 WL 2463069, at \*1 (Del. 2011) (affirming the sentence imposed by the Superior Court for Plaintiff's third violation of probation (but remanding the matter for the Superior Court to credit Plaintiff for 62 days spent at Level V while awaiting Level IV work-release) and explaining that "[t]he record reflects that [Plaintiff] pled guilty on March 6, 2006 to one count of second degree assault. On May 26, 2006, the Superior Court sentenced [Plaintiff] to eight years at Level V incarceration, with credit for 167 days previously served, to be suspended after serving one year at Level V for two years of decreasing levels of probation."). Although it seems that Plaintiff's Level V sentence was indeed suspended after one year, Plaintiff was unable to comply with the terms of his probation; he was sentenced for his first violation of probation on March 9, 2007 and sentenced for his second violation of probation on November 21, 2007. *Id.* On September 22, 2010, Plaintiff was sentenced for his third violation of probation, and he was apparently incarcerated on this sentence at the time of the incidents alleged in his Complaint. *Id.* ("On September 22, 2010, the Superior Court sentenced Anderson on his third VOP, effective June 5, 2010, to six years at Level V incarceration, to be suspended after serving one year and one month at Level V for six months at Level IV work release followed by one year at Level III probation."). Notably, the report for Plaintiff's third violation of probation was filed in December 2008, but due to Plaintiff's incarceration in Pennsylvania (presumably for the offenses that formed the subject of the Pennsylvania postconviction proceedings that Plaintiff references in his instant complaint), the capias was not returned until June 24, 2010. *Id.*

<sup>7</sup> Pltf.'s Complaint at 1.

<sup>8</sup> *Id.* at 2-4.

<sup>9</sup> Def.'s Mot. to Dismiss at 1.

<sup>10</sup> Def.'s Mot. to Dismiss at 1.

filing his post-conviction relief, resulting in the dismissal of his motion.<sup>11</sup> Plaintiff asserts this is an ongoing problem and that Defendants' mishandling of his mail has been intentional.<sup>12</sup>

Defendants respond that Plaintiff does not articulate actual injury or prejudice resulting from the alleged mishandling of his mail by Defendant Tingle.<sup>13</sup> Additionally, Defendants contend that Plaintiff does not specifically plead the facts surrounding the incident with the legal mail from the Pennsylvania Court, and, alternatively, that this occurrence was, at most, attributable to mere negligence, while such alleged interference is actionable only if it was due to intentional conduct by Defendants.<sup>14</sup> Finally, Defendants argue that they are entitled to immunity in this case because Plaintiff has failed to "state a claim of violation of clearly established law."<sup>15</sup>

## **STANDARD OF REVIEW**

When deciding a motion to dismiss pursuant to Delaware Superior Court Rule of Civil Procedure 12(b)(6), "the complaint generally defines the universe of facts that the trial court may consider[.]"<sup>16</sup> All well-pled allegations must be accepted as true.<sup>17</sup> A plaintiff's complaint may only be dismissed if "it appears to a certainty that the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof;"<sup>18</sup> a plaintiff must show more than a mere possibility of misconduct in order to be entitled to relief.<sup>19</sup> Factual issues cannot be resolved at the motion to dismiss stage; it "cannot be assumed at the pleading stage that the defendant will carry the burden [of establishing a defense to the plaintiff's claim.]"<sup>20</sup>

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<sup>11</sup> *Id.* See also Pltf's Resp. at 2.

<sup>12</sup> Pltf.'s Resp. at 3.

<sup>13</sup> Def.'s Mot. to Dismiss at 1.

<sup>14</sup> Def.'s Resp. at 3.

<sup>15</sup> *Id.* at 2-3 (citations omitted).

<sup>16</sup> *In re Gen. Motors Shareholder Litigation*, 897 A.2d 162, 168 (Del. 2006).

<sup>17</sup> See, e.g., *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>18</sup> *Klein v. Sunbeam Corp.*, 47 Del. 536, 538 (Del. 1952).

<sup>19</sup> *Robinson v. Danberg*, 729 F. Supp. 2d 666, 667 (D. Del. 2010) ("[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged-but it has not shown-that the pleader is entitled to relief.") (citation omitted).

<sup>20</sup> *Krasner v. Moffett*, 826 A.2d 277, 287 (Del. 2003).

Also, when appropriate, this Court will hold a *pro se* Plaintiff's complaint to a less demanding standard of review.<sup>21</sup> However, "there is no different set of rules for *pro se* plaintiffs,"<sup>22</sup> and this Court will accommodate *pro se* litigants only to the extent that such leniency does not affect the substantive rights of the parties.<sup>23</sup>

## **DISCUSSION**

The allegations contained in Plaintiff's filings are not cogently set forth. As a result, neither the facts of this case nor Plaintiff's alleged injury is entirely clear. Although this Court must accept all "well-pleaded" allegations as true for purposes of a Rule 12(b)(6) motion to dismiss, the Court will "ignore conclusory allegations that lack specific supporting factual allegations."<sup>24</sup> In this case, even holding Plaintiff's *pro se* Complaint to a "somewhat less stringent technical standard,"<sup>25</sup> it nonetheless lacks well-pleaded allegations that would provide a sufficient legal or factual basis on which Plaintiff could recover from Defendants.

A prisoner must have "adequate, effective and meaningful access to the courts."<sup>26</sup> However, a denial of access to the courts arises only when a prisoner shows that "a nonfrivolous, arguable claim [was] lost" because of the alleged denial of access to the court.<sup>27</sup> Put differently, a claim of denial of right of access to the courts "is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court."<sup>28</sup>

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<sup>21</sup> See, e.g., *Vick v. Haller*, 522 A.2d 865, \*1 (Del. 1985) ("A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers. . . ."). Cf. *In re Estate of Hall*, 882 A.2d 761 (Del. 2005) ("While this Court allows a *pro se* litigant leeway in meeting the briefing requirements, the brief at the very least must assert an argument that is capable of review.").

<sup>22</sup> *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001).

<sup>23</sup> *Alston v. State*, 2002 WL 184247, \*1 (Del. Super. Ct. 2002) ("While procedural requirements are not relaxed for any type of litigant (barring extraordinary circumstances or to prevent substantial injustice), the Court may grant *pro se* litigants some accommodations that do not affect the substantive rights of those parties involved in the case at bar.").

<sup>24</sup> *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citation omitted).

<sup>25</sup> See *supra* note 21.

<sup>26</sup> *Robinson v. Danberg*, 729 F. Supp. 2d 666, 676 (D. Del. 2010) (citation omitted).

<sup>27</sup> *Id.*

<sup>28</sup> *Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

The requirement that a prisoner claiming denial of access to courts specify the underlying cause of action and the alleged lost remedy “is a constitutional prerequisite to suit.”<sup>29</sup> Further, this prerequisite is “not satisfied by just any type of frustrated legal claim.”<sup>30</sup> Instead, “the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant;” the prisoner must show that the nature of his underlying claim consists of “more than hope.”<sup>31</sup> Consequently, a prisoner’s complaint that fails to articulate the basis of his underlying claim and the alleged lost remedy is properly dismissed pursuant to Rule 12(b)(6); indeed, as succinctly stated by the United States District Court for the Eastern District of Pennsylvania: “simply asserting the loss of a legal claim is insufficient to survive a [Federal] Rule 12(b)(6) motion. Instead, a plaintiff, even one proceeding *pro se*, must plead the ‘lost’ claim with specificity so that the court can determine whether the defendant’s actions deprived the plaintiff of a nonfrivolous legal claim.”<sup>32</sup>

Moreover, the Court should resolve this issue as early as possible in access to courts litigation, lest it unnecessarily address a constitutional issue. As explained by the Supreme Court of the United States: “the right of a defendant in a backward-looking access [to courts] suit to obtain early dismissal of a hopelessly incomplete claim for relief coincides [] with the obligation of the Judicial Branch to avoid deciding constitutional issues needlessly.”<sup>33</sup>

Plaintiff’s contentions that Defendants tampered with his mail, even if taken as true, do not sufficiently allege actual injury; in turn, Plaintiff’s Complaint must be dismissed. In this case, Plaintiff has merely alleged that the mishandling of his legal mail “caus[ed] the dismissal of his post-conviction collateral relief” claim in the Pennsylvania courts.<sup>34</sup> Plaintiff does not articulate, much less substantiate, the basis for his underlying postconviction claims; Plaintiff was required to plead this issue with adequate specificity, such that this Court could determine whether his underlying

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<sup>29</sup> *Robinson*, 729 F. Supp.2d at 676 (citing *Lewis v. Casey*, 518 U.S. 343 (1996)).

<sup>30</sup> *Lewis*, 518 U.S. at 354.

<sup>31</sup> *Christopher*, 536 U.S. at 416.

<sup>32</sup> *Monroe v. Bear*, 2007 WL 764086, \*10 (E.D. Pa. 2007) (citations omitted).

<sup>33</sup> *Christopher*, 536 U.S. at 417. A “backward-looking” access to courts claim is one which looks “backward to a time when specific litigation ended poorly, or could not have commenced, or could have produced a remedy subsequently unobtainable.” *Id.* at 413.

<sup>34</sup> Pltf.’s Resp. at 3.

postconviction claim was “nonfrivolous” and predicated on “more than hope.”<sup>35</sup> Although Plaintiff alleged that the purported mishandling of his mail resulted in his postconviction claims being dismissed by the Pennsylvania courts based on filing deadlines, he nonetheless failed plead facts suggesting that this “lost” underlying claim was in any way meritorious.<sup>36</sup> In short, Plaintiff has not shown how the mishandling of his legal mail in this instance denied him access to courts and led to dismissal of “a nonfrivolous, arguable claim.”<sup>37</sup>

Additionally, beyond his conclusory assertions that Defendant Tingle acted intentionally, Plaintiff has failed to allege a factual basis supporting the contention that her actions were in fact intentional. This is another prerequisite to Plaintiff’s suit:

[i]nterference with legal mail implicates a prison inmate’s right to access to the courts. [P]rison inmates have a constitutional right to access the courts under the First Amendment. However, a plaintiff must allege intentional conduct on the defendant’s part in order to state a claim that his right of access to the courts has been denied....If “access to the courts is impeded by mere negligence, as when legal mail is inadvertently lost or misdirected, no constitutional violation occurs.”<sup>38</sup>

Thus, even had there been a denial of access to courts with sufficiently articulated actual injury, in this instance, Plaintiff has not proffered a “well-pleaded” allegation that Defendants’ actions were more than mere negligence.<sup>39</sup> Consequently, Plaintiff’s claims must also be dismissed on this basis.

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<sup>35</sup> See *supra* notes 31-32.

<sup>36</sup> See *supra* note 32; see also *Piskanin v. Hammer*, 2005 WL 3071760, \*13 (E.D. Pa. 2005) (“The Amended Complaint does not, however, allege the basis of [plaintiff’s underlying claims] and whether Plaintiff was able to assert the claims which formed the basis for that petition in any other action. Consequently, the Court finds that Counts III of the Amended Complaint do not state a Section 1983 claim of denial of access to the courts in violation of Plaintiff’s rights pursuant to the First, Fifth, and Fourteenth Amendments.”).

<sup>37</sup> *Robinson*, 729 F.Supp. 2d at 676.

<sup>38</sup> *Johnson v. United States*, 2005 WL 2736512 (M.D. Pa. Oct. 24, 2005) *aff’d sub nom. Johnson v. Atty. Gen. of U.S.*, 187 F. Appx. 154 (3d Cir. 2006) (citation omitted).

<sup>39</sup> See *supra* notes 17, 24.

## CONCLUSION

Plaintiff has failed to state a claim upon which relief can be granted. Accordingly, for all the reasons stated above, Defendants' Motion to Dismiss is **GRANTED** as to both *Anderson v. Tingle, et al.*, C.A. No. N11C-04-02 RRC and *Anderson v. Powell, et al.*, C.A. No. N11C-03-208 RRC.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

cc: Prothonotary