**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

| | | |
|---|---|---|
| KENNY WATFORD, et al., | : | |
| | : | Civil Action No. 10-3650 (NLH) |
| Plaintiffs, | : | |
| | : | |
| v. | : | **MEMORANDUM OPINION** |
| | : | |
| ROBERT BALICKI, | : | |
| | : | |
| Defendant. | : | |

**APPEARANCES:**

Plaintiffs pro se
Kenny Watford
Matthew Craddock
Todd Ford
Charles A. Heard
Steven W. Mackay
Michael W. Lamb
David Zimmerman
Omar Rivera
Aaron Ward
Quason Blake
Richard Strong
Thomas Wright
Eric White
Clarence Jenkins
and David Martinez, Sr.
Cumberland County Jail
54 West Broad Street
Bridgeton, NJ 08302

**HILLMAN**, District Judge

Plaintiffs, pre-trial detainees and convicted prisoners confined at Cumberland County Jail in Bridgeton, New Jersey, seek to bring this civil action in forma pauperis, without prepayment of fees or security, asserting claims pursuant to 42 U.S.C.

§ 1983. Plaintiffs seek to challenge a jail policy regarding transportation of certain prisoners in handcuffs.

Civil actions brought in forma pauperis are governed by 28 U.S.C. § 1915. The Prison Litigation Reform Act of 1995, Pub. L. No. 104-135, 110 Stat. 1321 (April 26, 1996) (the "PLRA"), which amends 28 U.S.C. § 1915, establishes certain financial requirements for prisoners who are attempting to bring a civil action or file an appeal in forma pauperis.

Under the PLRA, a prisoner seeking to bring a civil action in forma pauperis must submit an affidavit, including a statement of all assets, which states that the prisoner is unable to pay the fee. 28 U.S.C. § 1915(a)(1). The prisoner also must submit a certified copy of his inmate trust fund account statement(s) for the six-month period immediately preceding the filing of his complaint. 28 U.S.C. § 1915(a)(2). The prisoner must obtain this certified statement from the appropriate official of each prison at which he was or is confined. Id.

Even if the prisoner is granted in forma pauperis status, the prisoner must pay the full amount of the $350 filing fee in installments. 28 U.S.C. § 1915(b)(1). In each month that the amount in the prisoner's account exceeds $10.00, until the $350.00 filing fee is paid, the agency having custody of the prisoner shall assess, deduct from the prisoner's account, and forward to the Clerk of the Court an installment payment equal to

20 % of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2).

In Hagan v. Rogers, 570 F.3d 146 (3d Cir. 2009), the Court of Appeals for the Third Circuit held that in forma pauperis prisoners are not categorically barred from joining as plaintiffs under Rule 20 of the Federal Rules of Civil Procedure and further addressed certain considerations applicable to civil cases in which multiple prisoner plaintiffs seek to join in one action pursuant to Rule 20.

Plaintiffs may not have known when they submitted their complaint that, where the entire $350 filing fee has not been pre-paid and the plaintiffs seek leave to proceed in forma pauperis, each of them must submit a separate application for leave to proceed in forma pauperis and each of them must be assessed and pay the full filing fee, and that even if the full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds that the action: (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B) (in forma pauperis actions); Hagan, 570 F.3d at 150. See also 28 U.S.C. § 1915A (dismissal of actions in which prisoner seeks redress from a governmental defendant); 42 U.S.C. § 1997e (dismissal of prisoner actions brought with respect to prison conditions). If

the Court dismisses the case for any of these reasons, the PLRA does not suspend installment payments of the filing fee or permit the prisoner to get back the filing fee, or any part of it, that has already been paid.

If any prisoner has, on three or more prior occasions while incarcerated, brought in federal court an action or appeal that was dismissed on the grounds that it was frivolous or malicious, or that it failed to state a claim upon which relief may be granted, he cannot bring another action in forma pauperis unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

In addition, Rule 20 of the Federal Rules of Civil Procedure provides the following regarding permissive joinder of parties:

> (1) Plaintiffs. Persons may join in one action as plaintiffs if:
>  (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>  (B) any question of law or fact common to all plaintiffs will arise in the action.
> (2) Defendants. Persons ... may bejoined in one action as defendants if:
>  (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>  (B) any question of law or fact common to all defendants will arise in the action.

Fed.R.Civ.P. 20(a).

The requirements prescribed by Rule 20(a) are to be liberally construed in the interest of convenience and judicial economy. Swan v. Ray, 293 F.3d 1252, 1253 (11th Cir. 2002). However, the policy of liberal application of Rule 20 is not a license to join unrelated claims and defendants in one lawsuit. See, e.g., Pruden v. SCI Camp Hill, 252 Fed.Appx. 436 (3d Cir. 2007); George v. Smith, 507 F.3d 605 (7th Cir. 2007); Coughlin v. Rogers, 130 F.3d 1348 (9th Cir. 1997).

"In exercising its discretion [whether to permit joinder], the District Court must provide a reasoned analysis that comports with the requirements of the Rule, and that is based on the specific fact pattern presented by the plaintiffs and claims before the court." Hagan, 540 F.3d at 157.

Also, Title 42 Section 1997e(a) provides that, "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Exhaustion of administrative remedies by one prisoner does not meet the exhaustion requirement for multiple prisoner plaintiffs seeking to join in one action; joinder may not be appropriate where a separate determination is required as to whether each co-plaintiff has complied with the exhaustion requirement. See, e.g., Lilly v. Ozmint, Civil No. 07-1932, 2007

WL 2022190 (D.S.C. July 11, 2007); Worthen v. Oklahoma Dept. of Corrections, 2007 WL 4563665, *3 (W.D. Okla. 2007).

Finally, it remains an open question in this Circuit whether a plaintiff whose claims proceed may be held responsible under 28 U.S.C. § 1915(g) for the dismissal of a co-plaintiff's claims. Hagan, 570 F.3d at 156. Cf. Boriboune v. Berge, 391 F.3d 852, 854-55 (7th Cir. 2004); George v. Smith, 507 F.3d 605, 607-08 (7th Cir. 2007).

IT APPEARING THAT:

In this action, the $350 filing fee was not pre-paid and no Plaintiff submitted a complete in forma pauperis application as required by 28 U.S.C. § 1915(a)(1), (2), including a certified account statement. See, e.g., Tyson v. Youth Ventures, L.L.C., 42 Fed.Appx. 221 (10th Cir. 2002); Johnson v. United States, 79 Fed.Cl. 769 (2007).

The plaintiffs include both pre-trial detainees, whose prison conditions-of-confinement claims are governed by the Due Process Clause of the Fourteenth Amendment, and convicted and sentenced prisoners whose conditions-of-confinement claims are governed by the Eighth Amendment proscription against cruel and unusual punishment. See Bell v. Wolfish, 441 U.S. 520, 535, n.16, 545 (1979); City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 244 (1983); Hubbard v. Taylor, 399 F.3d 150 (3d Cir. 2005); Fuentes v. Wagner, 206 F.3d 335, 341 (3d Cir.

2000). Thus, it appears that the claims of the two groups of Plaintiff may not be appropriate for joinder.

The allegations of the Complaint do not suggest that Plaintiff is in imminent danger of serious physical injury.

CONCLUSION

For the reasons set forth above, Plaintiffs' application for leave to proceed in forma pauperis will be denied without prejudice and the Clerk of the Court will be ordered to administratively terminate this action, without filing the complaint or assessing a filing fee. Plaintiffs will be granted leave to move to re-open within 30 days.[1] Any such motion to re-open must be accompanied by either (1) pre-payment of the full $350 filing fee or (2) an application from each plaintiff for leave to proceed in forma pauperis, including the required certified six-months institutional account statement. In addition, in order for the Court to be able to determine whether joinder should be permitted, any such motion to re-open must be accompanied by a statement, signed by each plaintiff, detailing (1) any prior actions brought in forma pauperis by each

[1] Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is reopened pursuant to the terms of the accompanying Order, it is not subject to the statute of limitations time bar if it was originally filed timely. See Houston v. Lack, 487 U.S. 266 (1988) (prisoner mailbox rule); McDowell v. Delaware State Police, 88 F.3d 188, 191 (3d Cir. 1996); see also Williams-Guice v. Board of Education, 45 F.3d 161, 163 (7th Cir. 1995).

plaintiff, (2) the efforts made by each plaintiff to exhaust his administrative remedies, and (3) the status of each plaintiff, as a pre-trial detainee, a convicted but unsentenced prisoner, or a convicted and sentenced prisoner, and setting forth the dates applicable to each such status.

An appropriate Order will be entered.

At Camden, New Jersey

/s/ NOEL L. HILLMAN
Noel L. Hillman
United States District Judge

Dated: JULY 23, 2010