

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEITH A. HICKS,

Plaintiff,

v.

COMMISSIONER ROBERT COUPE,
et al.,

Defendants.

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

Civil Action No. 14-1402-RGA

Keith A. Hicks, Jr., James T. Vaughn Correctional Center, Smyrna, Delaware. Pro Se Plaintiff.

MEMORANDUM OPINION

January 26, 2015
Wilmington, Delaware


ANDREWS, U.S. District Judge:

Plaintiff Keith A. Hicks, Jr., an inmate at the James T. Vaughn Correctional Center, Smyrna, Delaware filed this action pursuant to 42 U.S.C. § 1983. He appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 5). The Court proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a).

According to Plaintiff's allegations, on July 21, 2014, Plaintiff was standing in front of the K-tier railing waiting to be called for educational classes. As he was bending over the railing speaking to another inmate, Defendant Cpl. Boyle threw a chair at him. The chair hit Plaintiff on the back of both legs, and he sustained injuries to his legs and back. When Plaintiff asked Boyle why he had thrown the chair at him, Boyle explained that Plaintiff was "off limits" and that he "needed to secure [his] attention." Plaintiff was sent to medical for examination and treatment.

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. 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.” *Id.* at 94 (citations 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) 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. *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 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 complaint may be dismissed only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court concludes that those allegations “could not raise a claim of entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Though “detailed factual allegations” are not required, a complaint must do more than simply provide “labels and

conclusions” or “a formulaic recitation of the elements of a cause of action.” *Davis v. Abington Mem’l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (quoting *Twombly*, 550 U.S. at 555). In addition, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. See *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 315 (3d Cir. 2014).

To determine whether a complaint meets the pleading standard as set forth in *Twombly* and *Iqbal*, the Court must: (1) outline the elements a plaintiff must plead to state a claim for relief; (2) peel away those allegations that are no more than conclusions and thus not entitled to the assumption of truth; and (3) look for well-pled factual allegations, assume their veracity, and then “determine whether they plausibly give rise to an entitlement to relief.” *Bistrain v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012) (internal citations omitted). The last step is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

Plaintiff appears to state a claim against Boyle. In addition to Boyle, though, Plaintiff has named Defendants Delaware Department of Correction Commissioner Robert Coupe, VCC Warden David Pierce and VCC employees Larrusso, Summers, and Hersey. Other than to describe these individuals, the Complaint contains no allegations directed towards them.

It appears that Coupe and Pierce are named as defendants based upon their supervisory positions. As is well established, supervisory liability cannot be imposed under § 1983 on a *respondeat superior* theory. See *Iqbal*, 556 U.S.662; *Monell v.*

Department of Social Services, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). “A[n individual government] defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of respondeat superior.” *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). Purpose rather than knowledge is required to impose liability on an official charged with violations arising from his or her superintendent responsibilities. *Iqbal*, 556 U.S. at 677. “Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Id.*

In the present case, Plaintiff does not associate any of his allegations with Coupe, Pierce, Larrusso, Summers or Hersey. The Complaint contains no allegations against these defendants, Plaintiff provides no facts to support a claim against them, and it is clear that the claims are facially insufficient. As a result, the claims lack an arguable basis in law or in fact. Therefore, Defendants Coupe, Pierce, Larrusso, Summers, and Hersey, and the claims raised against them, will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Plaintiff will be allowed to proceed with the excessive force claim against Boyle.

An appropriate order will be entered.