

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOEL R. STEVENSON,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 17-198-GMS
)	
UNKNOWN CORRECTIONAL)	
OFFICERS, et al.,)	
)	
Defendants.)	

MEMORANDUM

The plaintiff Joel R. Stevenson (“Stevenson”), a prisoner incarcerated at the James T. Vaughn Center (“VCC”), Smyrna, Delaware, filed this lawsuit pursuant to 42 U.S.C. § 1983.¹ He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a).

I. THE COMPLAINT

The State of Delaware is named as a defendant in the caption of the case and two unknown correctional officers are named as defendants in the section describing the defendants. Stevenson is currently housed at the VCC. However, when he was housed at the Howard R. Young Correctional Institution (“HRYCI”) in Wilmington, Delaware, during the third week of March 2015 “two unknown DOC officers twisted [his] arms, wrenched them behind [his] back,

¹When bringing a § 1983 claim, 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).

and picked him up by [his] elbows making [his] right shoulder snap when something inside broke.” (D.I. 1 at 5.) He seeks compensatory damages.

II. STANDARD OF REVIEW

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); 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. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Stevenson proceeds *pro se*, his pleading is liberally construed and his complaint, “however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 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 merciless 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, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an 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) 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) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)).

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 Stevenson 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*, __U.S.__, 135 S.Ct. 346, 347 (2014). A complaint may not be dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 346.

Under the pleading regime established by *Twombly* and *Iqbal*, 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, the court should 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) (internal citations and quotations omitted). 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.*

III. DISCUSSION

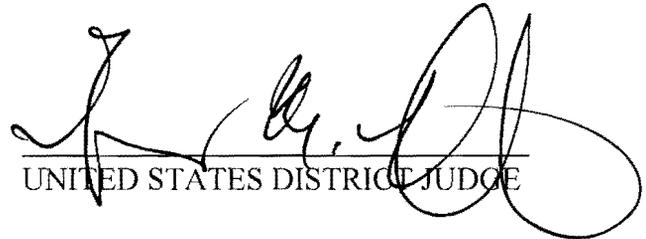
The Eleventh Amendment protects states and their agencies and departments from suit in federal court regardless of the kind of relief sought. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). “Absent a state’s consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant.” *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981) (citing *Alabama v. Pugh*, 438 U.S. 781 (1978)). The State of Delaware has not waived its immunity from suit in federal court; although Congress can abrogate a state’s sovereign immunity, it did not do so through the enactment of 42 U.S.C. § 1983. *See Brooks-McCollum v. Delaware*, 213 F. App’x 92, 94 (3d Cir. 2007) (unpublished).

The complaint alleges what appear to be cognizable excessive force claims against two John Doe correctional officers and *sua sponte* dismissal of the State of Delaware, who is immune from suit, would make it very difficult or impossible for Stevenson to discover the identity of the Doe defendants. Therefore, in the interests of justice, the court will direct service upon the State of Delaware for the sole purpose of identifying the Doe defendants, as described by Stevenson. *See Borges v. Administrator for Strong Mem’l Hosp.*, 2002 WL 31194558, at *1 n.1 (W.D.N.Y. Sept. 30, 2002). *See also Searcy v. Dallas Police Dep’t*, 2001 WL 611169 (N.D. Tex. May 31, 2001) (plaintiff sued two unnamed City of Dallas police officers, claiming excessive force, and magistrate judge ordered that service be completed on the defendants through the City of Dallas Police Department).

IV. CONCLUSION

For the above stated reasons, the plaintiff may proceed with the excessive force claims against the Doe correctional officers. The court will direct service upon the State of Delaware for the purpose of identifying the Doe correctional officers.

A separate order shall issue.



UNITED STATES DISTRICT JUDGE

June 26, 2017
Wilmington, Delaware