

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

VICKIE YVONNIE LAMBERT,

Plaintiff,

v.

NO DEFENDANT LISTED,

Defendant.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 16-cv-06805(JBS-AMD)

OPINION

APPEARANCES

Vickie Yvonne Lambert
Plaintiff Pro Se
2031 West Minster Avenue
Camden, NJ 08104

SIMANDLE, Chief District Judge:

1. Plaintiff Vickie Yvonne Lambert seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 for allegedly unconstitutional conditions of confinement. Complaint, Docket Entry 1. Although Plaintiff does not name a defendant in the caption or in § I(B) of her Complaint, this Court will construe Plaintiff's allegations as asserting claims against Camden County Jail ("CCJ"), based on Plaintiff's statement in § III(A) of her Complaint that the events giving rise to her claims occurred in the "Camden County Jail."

2. Section 1915(e)(2) requires a court to review complaints prior to service in cases in which a plaintiff is proceeding in forma pauperis. The Court must sua sponte dismiss

any claim that is frivolous, is 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. This action is subject to sua sponte screening for dismissal under Section 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3. First, the Complaint must be dismissed with prejudice as to claims made against the CCJ because defendant is not a "state actor" within the meaning of § 1983. See *Crawford v. McMillian*, 660 F. App'x 113, 116 (3d Cir. 2016) ("[T]he prison is not an entity subject to suit under 42 U.S.C. § 1983.") (citing *Fischer v. Cahill*, 474 F.2d 991, 992 (3d Cir. 1973)); *Grabow v. Southern State Corr. Facility*, 726 F. Supp. 537, 538-39 (D.N.J. 1989) (correctional facility is not a "person" under § 1983).

4. Second, for the reasons set forth below, the Court will dismiss the Complaint without prejudice for failure to state a claim. 28 U.S.C. § 1915(e)(2)(b)(ii).

5. The present Complaint does not allege sufficient facts to support a reasonable inference that a constitutional violation has occurred in order to survive this Court's review under § 1915. Even accepting the statements in Plaintiff's Complaint as true for screening purposes only, there is not enough factual support for the Court to infer a constitutional violation has occurred.

6. To survive *sua sponte* screening for failure to state a claim¹, the Complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014). "[A] pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Moreover, while *pro se* pleadings are liberally construed, *pro se* plaintiffs "still must allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted).

¹ "The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)." *Samuels v. Health Dep't*, No. 16-1289, 2017 WL 26884, slip op. at *2 (D.N.J. Jan. 3, 2017) (citing *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012)); *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)); *Mitchell v. Beard*, 492 F. App'x 230, 232 (3d Cir. 2012) (discussing 28 U.S.C. § 1997e(c)(1)); *Courteau v. United States*, 287 F. App'x 159, 162 (3d Cir. 2008) (discussing 28 U.S.C. § 1915A(b)).

7. With respect to the alleged facts giving rise to her claims in the Complaint, Plaintiff states: "In 7 day lock up I was put in a room (small) with 3 other women and was on the floor. My head was by the toilet and I was in there with people who were very aggravated loud [sic] and was [sic] detoxing from all kinds of drugs and medication. They was [sic] pooping and throwing up every 30 mins, we ran out of toilet paper and there was none to give us from the correction officer. It was very cold and we only recieved [sic] 1 toilet and had limited time to shower and make phone calls. We asked for a new towel or toilet paper or pads[.] [T]here was [sic] never any to give[.] I was told they was [sic] out by every correctional officer that came on shift. Also my time in the maze [sic] there was a dead rat/mouse in the closet. [I]n maze(y) [sic] and I had to endure the smell of it from the 3rd til [sic] the 15th of September because the correctional officers did not want to report it. [A]long with all the other ladies that were there every person that was in 7 day lock up when I was there. But I do not recall any of there [sic] names and the ladies inmaze(y) [sic]."

Complaint § III(C).

8. Plaintiff contends that "[d]ue to not changing towels and limited time in showers I had to go to the nurse there because I had got [sic] a rash on my right thigh that the drs gave me antiobitic [sic] cream for and my feet itched alot [sic]

while stepping in and out of the shower due to no water shoes or anything on the floor surface of taking a shower." *Id.* § IV.

9. Plaintiff states that the purported events giving rise to her claims occurred in the Camden County Jail (*id.* § III(A)) during "August 29th 2016 till Sept 3rd of 2016 for me for 7 day lockup[,] then the maze [*sic*] Sept 3rd till [*sic*] Sept 15th." *Id.* § III(B).

10. Plaintiff seeks "whatever legal amount I am suppose [*sic*] to recieve [*sic*] for the treatment I endured during my time at the Camden County Correctional Facility from August 29th till [*sic*] Sept 15th 2016 or open for discussion." *Id.* § V.

11. Plaintiff's claims must be dismissed because the Complaint does not set forth enough factual support for the Court to infer that a constitutional violation has occurred.

12. The mere fact that an individual is lodged temporarily in a cell with more persons than its intended design does not rise to the level of a constitutional violation. *See Rhodes v. Chapman*, 452 U.S. 337, 348-50 (1981) (holding double-celling by itself did not violate Eighth Amendment); *Carson v. Mulvihill*, 488 F. App'x 554, 560 (3d Cir. 2012) ("[M]ere double-bunking does not constitute punishment, because there is no 'one man, one cell principle lurking in the Due Process Clause of the Fifth Amendment.'" (quoting *Bell v. Wolfish*, 441 U.S. 520, 542 (1979))). More is needed to demonstrate that such crowded

conditions, for a pretrial detainee, shocks the conscience and thus violates due process rights. *See Hubbard v. Taylor*, 538 F.3d 229, 233 (3d Cir. 2008) (noting due process analysis requires courts to consider whether the totality of the conditions "cause[s] inmates to endure such genuine privations and hardship over an extended period of time, that the adverse conditions become excessive in relation to the purposes assigned to them."). Some relevant factors are the length of the confinement(s), whether plaintiff was a pretrial detainee or convicted prisoner, any specific individuals who were involved in creating or failing to remedy the conditions of confinement, any other relevant facts regarding the conditions of confinement, etc.

13. Plaintiff may be able to amend the Complaint to particularly identify adverse conditions that were caused by specific state actors, that caused Plaintiff to endure genuine privations and hardship over an extended period of time, and that were excessive in relation to their purposes. To that end, the Court shall grant Plaintiff leave to amend the Complaint within 30 days of the date of this order.²

14. Plaintiff is further advised that any amended complaint must plead specific facts regarding the conditions of

² The amended complaint shall be subject to screening prior to service.

confinement. In the event Plaintiff files an amended complaint, Plaintiff must plead sufficient facts to support a reasonable inference that a constitutional violation has occurred in order to survive this Court's review under § 1915.

15. Plaintiff should note that when an amended complaint is filed, the original complaint no longer performs any function in the case and cannot be utilized to cure defects in the amended complaint, unless the relevant portion is specifically incorporated in the new complaint. 6 Wright, Miller & Kane, Federal Practice and Procedure 1476 (2d ed. 1990) (footnotes omitted). An amended complaint may adopt some or all of the allegations in the original complaint, but the identification of the particular allegations to be adopted must be clear and explicit. *Id.* To avoid confusion, the safer course is to file an amended complaint that is complete in itself. *Id.* The amended complaint may not adopt or repeat claims that have been dismissed with prejudice by the Court.

16. For the reasons stated above, the Complaint is: (a) dismissed with prejudice as to the CCJ; and (b) dismissed without prejudice for failure to state a claim.

17. An appropriate order follows.

May 4, 2017
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge