

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PAUL C. REYES,

Plaintiff,  
v.CAMDEN COUNTY CORRECTIONAL  
FACILITY,

Defendant.

HONORABLE JEROME B. SIMANDLE

Civil Action  
No. 16-cv-08093 (JBS-AMD)

## OPINION

## APPEARANCES:

Paul C. Reyes, Plaintiff Pro Se  
58 Blackwood Clementon Rd.  
Clementon, NJ 08021

**SIMANDLE, Chief District Judge:**

1. Plaintiff Paul C. Reyes seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Camden County Correctional Facility ("CCCF"). Complaint, Docket Entry 1.
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 28 U.S.C. § 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3. 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).

4. To survive *sua sponte* screening for failure to state a claim, 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)).

5. Plaintiff brings this action pursuant to 42 U.S.C. § 1983<sup>1</sup> for alleged violations of Plaintiff's constitutional rights. In order to set forth a *prima facie* case under § 1983, a

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<sup>1</sup> Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." 42 U.S.C. § 1983.

plaintiff must show: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman v. Twp. of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)).

6. Generally, for purposes of actions under § 1983, "[t]he term 'persons' includes local and state officers acting under color of state law." *Carver v. Foerster*, 102 F.3d 96, 99 (3d Cir. 1996) (citing *Hafer v. Melo*, 502 U.S. 21 (1991)).<sup>2</sup> To say that a person was "acting under color of state law" means that the defendant in a § 1983 action "exercised power [that the defendant] possessed by virtue of state law and made possible only because the wrongdoer [was] clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49 (1988) (citation omitted). Generally, then, "a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." *Id.* at 50.

7. Because Plaintiff has not sufficiently alleged that a "person" deprived him of a federal right, the complaint does not

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<sup>2</sup> "Person" is not strictly limited to individuals who are state and local government employees, however. For example, municipalities and other local government units, such as counties, also are considered "persons" for purposes of § 1983. See *Monell v. N.Y.C. Dep't of Social Services*, 436 U.S. 658, 690-91 (1978).

meet the standards necessary to set forth a *prima facie* case under § 1983. Plaintiff seeks monetary damages from CCCF for allegedly unconstitutional conditions of confinement. The CCCF, however, is not a "person" within the meaning of § 1983; therefore, the claims against it must be dismissed with prejudice. *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)). Because the claims against the CCCF must be dismissed with prejudice, the claims may not proceed and Plaintiff may not name the CCCF as a defendant.

8. Plaintiff may be able to amend the complaint to name a person or persons who were personally involved in the alleged unconstitutional conditions of confinement, however. To that end, the Court shall grant Plaintiff leave to amend the complaint within 30 days of the date of this order.

9. Plaintiff is advised that the amended complaint 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. Plaintiff alleges he experienced unconstitutional conditions of confinement "starting from 11/26/2006 - 2/18/2016." Complaint § III. The fact section of the complaint states: "I've been incarcerated 28 times on the following dates[:] 11/24/2006 1/26/2007 6/27/2007 7/07/2007

10/12/2007 2/06/2008 4/14/2008 7/06/2008 1/17/2009 5/22/2009  
9/17/09 11/03/09 2/05/2010 9/07/2010 1/31/2011 7/05/2011  
9/24/2011 3/14/2012 9/18/2012 3/22/2013 6/14/2013 9/23/2013  
11/09/2013 12/14/2013 5/18/2015 8/27/2015 9/29/2015 and  
2/18/2016. Without exaggeration 26 of the 28 times I was  
incarcerated I was given a mat and was subjected to sleep in a  
cell with 3 other inmates during the 7 day lockdown period, on a  
mat on the floor literally either under[ ]neath the bottom bunk  
or in the center of the cell near the toilet. When moved to a  
tier 3NA - 5SB etc. (except the Mods) the conditions remained  
the same. Jail is jail I understand this but sleeping and having  
to eat on the floor is beyond unsanitary [and] inhumane." *Id.*  
Even accepting these statements as true for screening purposes  
only, there is not enough factual support for the Court to infer  
a constitutional violation has occurred.

10. 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 dates and length of the confinement(s), whether Plaintiff was a pretrial detainee or convicted prisoner, etc.

11. Moreover, to the extent the complaint seeks relief for conditions Plaintiff encountered during each of his confinements occurring between November 24, 2006, through his confinement on December 14, 2013, those claims are barred by the statute of limitations and must be dismissed with prejudice, meaning that Plaintiff cannot recover for those claims because they have been brought too late. Civil rights claims under § 1983 are governed by New Jersey's limitations period for personal injury and must be brought within two years of the claim's accrual. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985); *Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010). "Under federal law, a cause of action accrues when the plaintiff knew or should have known of

the injury upon which the action is based." *Montanez v. Sec'y Pa. Dep't of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014).

12. Plaintiff alleges the events giving rise to his claims occurred during twenty-eight different incarcerations between 2006 and 2016. Complaint § III. However, all but four of these incarcerations occurred more than two years prior to the filing of Plaintiff's complaint. The allegedly unconstitutional conditions of confinement at CCCF, namely the overcrowding, would have been immediately apparent to Plaintiff at the time of his detention; therefore, the statute of limitations for Plaintiff's 2006 through 2013 claims expired in 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015, respectively, well before this complaint was filed in 2016. Plaintiff therefore cannot recover for these claims.<sup>3</sup>

13. As Plaintiff may be able to amend his complaint to address the deficiencies noted by the Court, the Court shall grant Plaintiff leave to amend the complaint within 30 days of the date of this order. However, in the event Plaintiff does

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<sup>3</sup> Although the Court may toll, or extend, the statute of limitations in the interests of justice, certain circumstances must be present before it can do so. Tolling is not warranted in this case because the state has not "actively misled" Plaintiff as to the existence of his cause of action, there are no extraordinary circumstances that prevented Plaintiff from filing his claim, and there is nothing to indicate Plaintiff filed his claim on time but in the wrong forum. See *Omar v. Blackman*, 590 F. App'x 162, 166 (3d Cir. 2014).

elect to file an amended complaint, he should focus only on the facts of his confinements on May 18, 2015, August 27, 2015, September 29, 2015, and February 18, 2016.

14. 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.<sup>4</sup> *Id.*

15. For the reasons stated above, the claims arising from Plaintiff's confinements from November 24, 2006, through December 14, 2013, are dismissed with prejudice. The claims arising from Plaintiff's May 18, 2015, August 27, 2015, September 29, 2015, and February 18, 2016, confinements are dismissed without prejudice for failure to state a claim. The Court will reopen the matter in the event Plaintiff files an amended complaint within the time allotted by the Court.

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<sup>4</sup> The amended complaint shall be subject to screening prior to service.

16. An appropriate order follows.

April 7, 2017

Date

s/ Jerome B. Simandle

JEROME B. SIMANDLE

Chief U.S. District Judge