

NOT FOR PUBLICATION

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

KENNETH JAMISON,	:	CIV. ACTION NO. 16-9512 (JMV)
	:	
Plaintiff,	:	
	:	
v.	:	OPINION
	:	
P/O DWYER, <i>et al.</i> ,	:	
	:	
Defendants.	:	

APPEARANCES

KENNETH JAMISON
 Midstate Correctional Facility
 P.O. Box 866
 Wrightstown, NJ 08562
 Petitioner, *pro se*

STEPHEN D. HOLTZMAN, Esq.
 JEFFREY S. MCCLAIN, Esq.
 HOLTZMAN & MCCLAIN, PC
 524 Maple Avenue, Suite 200
 Linwood, NJ 08221
 On behalf of Defendant Dr.

VAZQUEZ, U.S. District Judge

This matter comes before the Court upon Defendant’s motion for judgment on the pleadings (ECF No. 15), and Plaintiff’s letter request to add defendants. (ECF No. 16.) For the reasons discussed below, the Court grants Defendant’s motion for judgment on the pleadings, and dismisses the amended complaint without prejudice. In response to Plaintiff’s letter request to add defendants, the Court will permit Plaintiff to reopen this matter if he files a properly amended complaint within 30 days of the date of this Order.

I. DISCUSSION

Plaintiff, a prisoner acting *pro se*, initiated this action by filing a civil rights complaint on December 27, 2016. (ECF No. 1.) Upon screening the Complaint pursuant to 28 U.S.C. § 1915A(b), the Court dismissed the Complaint without prejudice for failure to state a claim. (ECF Nos. 2, 3.) Plaintiff filed an Amended Complaint on March 27, 2017, attempting to cure the defects in his original complaint. (ECF No. 4.) The Court reopened this matter, and granted Plaintiff *in forma pauperis* status pursuant to 28 U.S.C. § 1915. (ECF No. 7.) The Court screened the Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). (*Id.*) In an Opinion dated May 25, 2017, the Court found that the Amended Complaint failed to state a claim upon which relief may be granted, and noted the Amended Complaint would be dismissed without prejudice in an accompanying order. (*Id.*) The Court, in error, entered an Order permitting the § 1983 claim against Defendant Kyzer to proceed. (ECF No. 8.)

Defendant Kyzer was served with the Amended Complaint on July 17, 2017 (ECF No. 12), and he filed an answer on August 16, 2017. (ECF No. 13.) Noting the conflict between this Court's May 25, 2017 Opinion and Order, Defendant filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)1 on August 30, 2017. (ECF No. 15-4 at 6-7.) On September 13, 2017, this Court received Plaintiff's letter request for an extension of time to add additional parties. (ECF No. 16).

¹ Federal Rule of Civil Procedure 12(c) provides, “[a]fter the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.” “A motion for judgment on the pleadings based on the defense that the plaintiff has failed to state a claim is analyzed under the same standards that apply to a Rule 12(b)(6) motion.” *Revell v. Port Authority of New York, New Jersey*, 598 F.3d 128, 134 (3d Cir. 2010) (quoting *Turbe v. Gov't of the V.I.*, 938 F.2d 427, 428 (3d Cir. 1991).

II. CONCLUSION

As this Court found in its Opinion dated May 25, 2017, Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted against Defendant Kyzer. (ECF No. 7.) The Court's accompanying Order permitting plaintiff to proceed against Defendant Kyzer was entered in error. (ECF No. 8.) Therefore, the Court grants Defendant Kyzer's motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(b)(c). The Amended Complaint is dismissed without prejudice. Plaintiff may submit an Amended Complaint within thirty days of this Order.

An appropriate Order follows.

Date: September 25, 2017
At Newark, New Jersey

s/ John Michael Vazquez
JOHN MICHAEL VAZQUEZ
United States District Judge