

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----X
CHRISTINE TONEY,

Plaintiff,

-against-

ORDER

15-CV-0561 (JS) (GRB)

PROBATION DEPARTMENT,

Defendant.

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APPEARANCESFor Plaintiff: Christine Toney, pro se
72 Grant Avenue
Brentwood, NY 11717

For Defendant: No appearance

SEYBERT, District Judge:

On January 27, 2015, pro se plaintiff Christine Toney ("Plaintiff") filed a Complaint pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as codified, 42 U.S.C. §§ 2000e to 2000e-17, and the Age Discrimination in Employment Act of 1967 ("ADEA"), as codified, 29 U.S.C. §§ 621-634, against the Probation Department ("Defendant") alleging that Defendant discriminated against her on the basis of her race, gender, and age. Plaintiff's Complaint is accompanied by an application to proceed in forma pauperis.

Plaintiff's ADEA claim is not plausible as a matter of law given that Plaintiff alleges that she is less than 40 years old having been born in 1976. (Compl. ¶ 7.) The ADEA prohibits employment discrimination because a person is age forty (40) or older. 29 U.S.C. § 631(a); see also Abdu-Brisson v. Delta Air

Lines, Inc., 239 F.3d 456, 467 n.3 (2d Cir. 2001) (stating that "one must reach the age of forty before falling under the protection of the ADEA") (citation omitted). Thus, Plaintiff's ADEA claim is sua sponte DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). However, Plaintiff's claims under Title VII may proceed at this state.

Upon review of Plaintiff's declaration in support of her application to proceed in forma pauperis, the Court finds that Plaintiff's financial status qualifies her to commence this action without prepayment of the filing fees. See 28 U.S.C. § 1915(a)(1). Accordingly, Plaintiff's application to proceed in forma pauperis is GRANTED and the Court ORDERS service of the Complaint by the United States Marshal Service ("USMS") without prepayment of the filing fee. The Clerk of the Court shall forward the Summons, the Complaint, and this Order to the USMS and the USMS shall serve the Defendant.

The Clerk of the Court is further directed to mail a copy of this Order to the pro se Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: February 12, 2015
Central Islip, New York

