IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICKY MAYON, Plaintiff, v. JOHN WETZEL, *et al.*, Defendants.	)	Civil Action No. 2: 15-cv-1003 United States Magistrate Judge Cynthia Reed Eddy

MEMORANDUM OPINION[1]

I. INTRODUCTION

Presently before the Court is Defendants Mark Cappozza, Leo Dunn and John Wetzel's Motion to Dismiss [ECF No. 45, 62] and Defendants Colin Fischetti and Gaudenzia, Inc.'s Motion to Dismiss [ECF No. 47]. The motions are fully briefed and ripe for disposition. For the reasons that follow, said motions are GRANTED and Plaintiff's complaint is dismissed with prejudice.

II. BACKGROUND

Plaintiff Micky Mayon ("Plaintiff" or "Mayon") a prisoner presently confined at State Correctional Institution ("SCI") at Fayette and proceeding *pro se,* initiated this civil rights action on August 8, 2015. [ECF Nos. 1, 4]. Defendants filed Motions to Dismiss [ECF Nos. 29, 35]. Plaintiff responded to the motions by filing an Amended Complaint and a "Notice," supplementing the Amended Complaint [ECF Nos. 41, 42]. Defendants filed Motions to Dismiss the Amended Complaint [ECF Nos. 45, 47] to which Plaintiff filed an Omnibus

[1] All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. *See* 28 U.S.C. § 636, *et seq*.

Response [ECF No. 59]. On February 6, 2017, the Court ordered supplemental briefing [ECF no. 65], which the parties provided. [ECF Nos. 66, 67, 70].

All defendants are named solely in their official capacities and Plaintiff seeks declaratory and injunctive relief only. [ECF Nos. 41, ¶¶ 1- 5, 64, 65; 42].

Mayon is presently a Pennsylvania state prisoner incarcerated at the State Correctional Institution ("SCI") at Fayette. The allegations which give rise to this Complaint occurred while Mayon was incarcerated at SCI-Pittsburgh, prior to his transfer to SCI-Fayette in March 2014. According to Plaintiff, while incarcerated at SCI-Pittsburgh, in order to qualify for parole, Mayon entered a rehabilitative program called Therapeutic Community ("T.C."). He alleges that he was denied parole because he did not survive T.C.[2] Mayon refers to T.C. as "The Pogroms."[3] Mayon alleges that participation in T.C. violates his First Amendment rights, the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc-2000cc-5. He alleges that there is nothing rehabilitative about T.C. and that his participation in T.C. violates his beliefs because, *inter alia*:

> At an early age, Plaintiff was inoculated with a healthy skepticism of big oppressive governments (Revelation 13:1-9) and other Christian tenets like tattling is a sin (II Timothy 3:1-4, Proverbs 30:10-14). Plaintiff retains these beliefs to this day. Without regard for Plaintiff or his beliefs, the Defendants forced him to say and do the reverse.

[ECF No. 41, ¶ 30].

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[2] Plaintiff brought a similar claim in another lawsuit filed with this Court at 2:14-CV-01203 in which the Court granted summary judgment to defendants on Plaintiff's claim that he was denied parole due to a negative parole recommendation due to Plaintiff's failure to administratively exhaust his grievances.

[3] Merriam-Webster Dictionary defines pogrom as "an organized massacre of helpless people; specifically: such a massacre of Jews." The Court does not find this reference appropriate, amusing or clever and will not use the term.

III. Standards of Review

1. *Pro Se* Litigants

Pro se pleadings are held to a less stringent standard than more formal pleadings drafted by lawyers. *Estelle v. Gamble,* 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). As such, a *pro se* complaint pursuant to 42 U.S.C. § 1983 must be construed liberally, *Hunterson v. DiSabato*, 308 F.3d 236, 243 (3d Cir. 2002), so "as to do substantial justice." *Alston v. Parker*, 363 F.3d 229, 234 (3d Cir. 2004) (citations omitted). In other words, if the court can reasonably read pleadings to state a valid claim on which the litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or the litigant's unfamiliarity with pleading requirements. *Boag v. MacDougall*, 454 U.S. 364 (1982); *United States ex rel. Montgomery v. Bierley*, 141 F.2d 552, 555 (3d Cir.1969) (petition prepared by a prisoner may be inartfully drawn and should be read "with a measure of tolerance"). Notwithstanding this liberality, *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim. *See, e.g., Taylor v. Books A Million, Inc*., 296 F.3d 376, 378 (5th Cir. 2002). Because Plaintiff is a *pro se* litigant, this Court may consider facts and make inferences where it is appropriate.

2. Motion to Dismiss Pursuant to Rule 12(b)(6)

The applicable inquiry under Federal Rule of Civil Procedure 12(b)(6) is well settled. Under Federal Rule of Civil Procedure 8, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Federal Rule of Civil Procedure 12(b)(6) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is

plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint that merely alleges entitlement to relief, without alleging facts that show entitlement, must be dismissed. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). This "'does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of' the necessary elements." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (*quoting Twombly*, 550 U.S. at 556). Nevertheless, the court need not accept as true "unsupported conclusions and unwarranted inferences," *Doug Grant, Inc. v. Great Bay Casino Corp.*, 232 F.3d 173, 183–84 (3d Cir. 2000), or the plaintiff's "bald assertions" or "legal conclusions," *Morse v. Lower Merion Sch. Dist*., 132 F.3d 902, 906 (3d Cir. 1997).

When considering a Rule 12(b)(6) motion, the court's role is limited to determining whether a plaintiff is entitled to offer evidence in support of his claims. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The court does not consider whether a plaintiff will ultimately prevail. *See id*. A defendant bears the burden of establishing that a plaintiff's complaint fails to state a claim. *See Gould Elecs. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000).

IV. DISCUSSION

The Court must begin by addressing whether this case, or any aspect of the relief requested by Plaintiff, has become moot. *See Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003) (explaining that the issue of mootness must be addressed *sua sponte* because it affects the court's Article III jurisdiction). "If developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot." *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-699 (3d Cir. 1996).

The Plaintiff sued the Defendants in their official capacity seeking declaratory and injunctive relief, requesting that the court declare that "the acts and omissions described herein violated Plaintiff's rights under the constitution and laws of the United States." He also requests [a] preliminary and permanent injunction enjoining Defendants John Wetzel, Mark Cappozza, Gaudenzia Inc., and Colin Fischeti from operating [T.C].; and enjoining Defendant Leo Dunn from denying parole unless prisoners survive [T.C.]." [ECF No. 41 ¶¶ 64, 65]. All of Plaintiff's claims in this lawsuit arise from incidents which allegedly occurred while he was incarcerated at SCI-Pittsburgh. He was transferred to SCI-Fayette after the incidents and prior to filing this lawsuit. There is nothing in the Amended Complaint to suggest there is a reasonable probability of Plaintiff's return to SCI-Pittsburgh.

In general, an inmate's claim for injunctive and declaratory relief becomes moot on his release from or transfer from the prison that was the location of the alleged violation. *Cobb v. Yost*, 342 Fed. App'x 858, 859 (3d Cir. 2009); *see also Sutton v. Rasheed*, 323 F.3d 236, 248 (3d Cir. 2003) ("An inmate's transfer from the facility complained of generally moots the equitable and declaratory claims."). A prisoner lacks standing to seek injunctive or declaratory relief if he is no longer subject to the alleged conditions he attempts to challenge. *See Weaver v. Wilcox*, 640 F.2d 22, 27 n. 13 (3d Cir. 1981) (prisoner's transfer from the prison moots claim for injunctive relief and declaratory relief with respect to prison conditions). The mootness doctrine recognizes a fundamental truth in litigation: "[i]f developments occur the course of adjudication that eliminates a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the request relief, the case must be dismissed as moot" *Blaciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996). While there is a "narrow exception" when a case presents a question capable of repetition yet evading review, Plaintiff does not meet this

narrow exception, as "[s]peculation that [Plaintiff] could return to prison does not overcome the mootness doctrine." *Cobb v. Yost*, 342 Fed. App'x 858, 859 (3d Cir. 2009) (quoting *Abdul-Akbar v. Watson*, 4 F.3d 195, 206 (3d Cir. 1993)).

Further, to the extent Plaintiff is attempting to bring this action on behalf of other prisoners currently housed in SCI-Pittsburgh or other prisons in the Commonwealth of Pennsylvania, he does not have standing to do so. Courts have consistently held that an inmate does not have standing to sue on behalf of other prisoners. *Weaver, supra*. at 22. A prisoner must allege a personal loss and seek to vindicate a deprivation of his own constitutional rights, not others. *See Singleton v. Wolff*, 528 U.S. 106 (1976).

Accordingly, all of Plaintiff's claims in the amended complaint against Defendants in their official capacity for injunctive and declaratory relief are moot by virtue of his transfer from SCI-Pittsburgh, and he does not have standing under Article III of the Constitution to assert such claims on behalf of other inmates at SCI-Pittsburgh, or elsewhere. To the extent that Plaintiff alleges that he is subject to the T.C. Program at SCI Fayette, he cannot supplement his claims through briefing and there are no such factual allegations in this complaint regarding T.C. at SCI Fayette, nor is SCI Fayette a party to this action and it is inappropriate for the court to consider unpleaded allegations against non-parties which are separate and independent from the claims in the present complaint. *See Pa. ex rel. Zimmerman v. PepsiCo*, 836 F.2d 173, 181 (3d Cir.1988). Lastly, to the extent that Plaintiff seeks to bring a class action for his claims, it is well-established that an individual proceeding *pro se* cannot adequately represent the interests of the class, particularly where he has been transferred from the institution he seeks to recover from, and his motion for class certification is denied. *See e.g., Alexander v. N.J. State Parole Bd.*, 160 F. App'x 249, 249 n. 1 (3d Cir.2005) (citing *Oxedine v. Williams*, 509 F.2d 1405, 1407 (4th

Cir.1975)).

V. CONCLUSION

If a civil rights complaint is subject to 12(b)(6) dismissal, a district must permit a curative amendment unless such an amendment would be inequitable or futile. *Alston v. Parker*, 363 F.3d 299, 235 (3d Cir. 2004). A district court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. *Id.*

For the reasons discussed *supra*, Plaintiff will not be granted leave to amend his Amended Complaint, as it would be futile.

Therefore, for the reasons stated above, Defendants' Motions to Dismiss (ECF No. 45, 47 and 62) are **GRANTED** and this case is dismissed, with prejudice.

An appropriate Order follows.

Dated: April 3, 2017

s/Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

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