

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

BASIL MARCEAUX,)	
)	
Plaintiff,)	
)	No. 1:10-mc-4
v.)	
)	Chief Judge Curtis L. Collier
STATE OF TENNESSEE and RED BANK)	
CONCAVE GOVERNMENT,)	
)	
Defendants.)	

MEMORANDUM & ORDER

Before this Court is an application to proceed *in forma pauperis* filed by Plaintiff Basil Marceaux, Sr. (“Marceaux”) (Court File No. 1). Pursuant to 28 U.S.C. § 1915(e)(2)(B), Magistrate Judge William B. Mitchell Carter issued an Report and Recommendations (“R&R”) recommending Marceaux’s application to proceed *in forma pauperis* be denied and this case be dismissed with prejudice as frivolous (Court File No. 2). Marceaux filed a response to the R&R, which will be construed as an objection (Court File No. 3).

The Court is required to dismiss an *in forma pauperis* claim *sua sponte* if it is frivolous or malicious or fails to state a basis upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(i)-(ii). A complaint need only contain a “short and plain statement of the claim showing that the pleader is entitled to relief,” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1940 (2009) (quoting Fed. R. Civ. P. 8(a)(2)), but that statement must contain “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Bare assertions of legal conclusions are insufficient, and the “complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.” *Scheid*

v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988). Unsupported allegations and legal conclusions “masquerading as factual conclusions” are not sufficient. *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005).

Marceaux has stated no allegations that would allow a recovery under any viable legal theory. From his complaint (which is how the Court construes the first four pages of his application to proceed *in forma pauperis*), the Court is unable to discern how Marceaux would have standing to raise the claims or the facts on which the claims are based.

Marceaux’s complaint submitted with his application to proceed *in forma pauperis* is frivolous and fails to state a claim upon which relief may be granted. Accordingly, the Court hereby **ADOPTS** the R&R (Court File No. 2), **DENIES** the motion to proceed *in forma pauperis* (Court File No. 1), and **DISMISSES** Marceaux’s claims with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

SO ORDERED.

ENTER:

/s/

CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE