

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

DAVID S. HARLESS,

Plaintiff,

v.

CIVIL ACTION NO. 2:16-cv-12413

ROOT EDMONSON, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On December 21, 2016, the plaintiff, David S. Harless, proceeding *pro se*, filed a Complaint under 42 U.S.C. § 1983 [ECF No. 2] and an Application to Proceed Without Prepayment of Fees and Costs [ECF No. 1]. The matter was initially referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge for submission of proposed findings and a recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). For reasons appearing to the court, the referral of this matter to the Magistrate Judge is **WITHDRAWN** and, as further addressed herein, it is hereby **ORDERED** that this matter is **DISMISSED as frivolous** under 28 U.S.C. § 1915(e)(2)(B)(i).

STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1915(e)(2)(B), because the plaintiff is seeking to proceed without prepayment of fees and costs, the court is obliged to screen the case to determine if the Complaint is (i) frivolous or malicious, (ii) fails to state a claim

upon which relief can be granted, or (iii) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). A “frivolous” claim is defined as one which is based on an indisputably meritless legal theory, and lacks “an arguable basis either in law or in fact.” *See Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).¹ This review is conducted before service of process or any responsive pleading from a defendant is required.

DISCUSSION

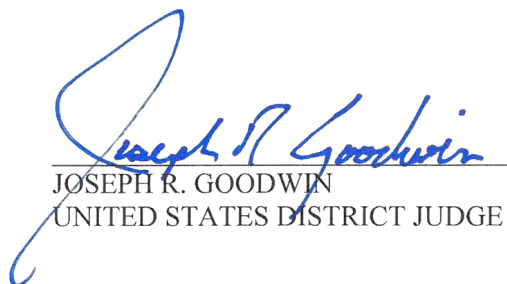
The Complaint and additional documentation filed by the plaintiff contain incoherent, fanciful ramblings which lack any arguable basis in law or fact. Thus, the court **FINDS** that the plaintiff’s filings are clearly baseless and patently frivolous. “A complaint such as this one that describes fantastic or delusional scenarios is subject to immediate dismissal.” *See Neitzke*, 490 U.S. at 328; *see also Denton*, 504 U.S. at 33 (holding that a court need not accept irrational and wholly incredible allegations whether or not there are judicially noticeable facts available to rebut them). Accordingly, the court **FINDS** that dismissal of this civil action under 28 U.S.C. § 1915(e)(2)(B)(i) is appropriate.

For the reasons stated herein, it is hereby **ORDERED** that the plaintiff’s Complaint [ECF No. 2] is **DISMISSED as frivolous** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), and his Application to Proceed Without Prepayment of Fees and Costs [ECF No. 1] is **DENIED as moot**.

¹ At the time of the decisions in *Denton* and *Neitzke*, the operative statutory provision was found in 28 U.S.C. § 1915(d), not section 1915(e). Nevertheless, the analysis thereunder remains the same.

The court **DIRECTS** the Clerk to send a copy of this Order to the plaintiff.

ENTER: January 4, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE