

The Trial Court dismissed Ray's Petition shortly after it was remanded thereto, and the record to this matter shows that no filings have been made by Appellee Raymond Sobina (Sobina), and no hearing of any kind has occurred in this case. As such, the Trial Court made no findings of fact. Given the scant record herein and the lack of any findings, we will merely repeat the Trial Court's recitation, from its opinion in this matter, of the procedural posture and accompanying narrative as articulated therein:¹

[Ray] is currently an inmate at State Correctional Institution, Greene, and was formerly incarcerated at State Correctional Institution, Forest. He states in his petition that during his incarceration at SCI Forest he "challenged unconstitutional and arbitrary custom of not allowing prisoners to schedule research time together in law library and prohibition of the same with legal material during outdoor recreation." [Ray] alleges that he was transferred to SCI Greene because he filed grievances against the law librarian at SCI Forest. He further alleges that his challenges to SCI Forest's policies regarding legal research and his filing of grievances made him a "bullseye [sic] for retaliation by SGT Smith and his wife LPN Smith who fabricated a retaliatory misconduct report." [Ray] explains that he subsequently filed grievances against Sergeant Smith and his wife for this alleged "retaliatory conduct." He also gave "notices" to Sergeant Smith and his wife in which he informed them that "they will be sued in Forest County Court." [Ray] next alleges that LPN Smith filed misconduct reports accusing [Ray] of making threats of bodily harm to LPN Smith in the "notice" [Ray] gave to LPN Smith. He alleges that LPN Smith did this in retaliation for having received the "notice" from [Ray]. He alleges that he was transferred to SCI Greene because he filed said

¹ In their briefs to this Court on appeal, neither party disputes any of the narrative provided by the Trial Court.

grievances and provided said “notices.” [Ray] explains that his grievance regarding the transfer was denied and that he has exhausted all administrative remedies. He alleges he was not provided with a factual basis for the denial of his grievances. Finally, [Ray] argues that he has a “1st and 14th Amendment protection from being transferred in retaliation for exercising his 1st Amendment Right to petition government for redress of grievances.” He asks this Court to issue an Order compelling SCI Greene to return him to SCI Forest and an order compelling the Superintendent of SCI Forest (Raymon [sic] J. Sobina) to “disclose factual basis for transfer and identity of all staff involved.”

Trial Court Memorandum Opinion of September 7, 2007, (hereinafter, Tr. Ct. Op.) at 1-2. The Trial Court *sua sponte* issued the above-excerpted Memorandum Opinion and concomitant order dismissing Ray’s Petition on September 7, 2007. The Trial Court concluded that Ray’s Petition was frivolous, and failed to state a cause of action upon which relief could be granted. Ray now appeals from the order of the Trial Court.²

We first address the Trial Court’s stated basis for its dismissal. The Trial Court dismissed Ray’s petition pursuant to Section 6602(e)(2) of the Prison Litigation Reform Act (PLRA), 42 Pa.C.S. §6602(e)(2), which states:

(e) Dismissal of litigation.--Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following:

* * *

² Our scope of review of the Trial Court's order in *sua sponte* dismissing the Petition is plenary where the Trial Court dismissed Ray’s complaint for failure to state a cause of action upon which relief may be granted. Owens v. Shannon, 808 A.2d 607 (Pa. Cmwlth. 2002).

(2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

The sum and total of the Trial Court's reasoning and rationale for its action in this case is stated within one sentence in its opinion:

Upon review of the [P]etition, this Court has determined that [Ray] has failed to state a claim upon which relief can be granted, and that his claims are frivolous.

Tr. Ct. Op. at 2. We disagree.

We first note that within the context of prison reform litigation, a frivolous action has been expressly defined as one that lacks an arguable basis either in law or in fact; stated otherwise, an action is frivolous if, on its face, it does not set forth a valid cause of action. Bailey v. Wakefield, 933 A.2d 1081 (Pa. Cmwlth. 2007). As such, Ray must merely have articulated sufficient facts within his Petition to support an arguable basis in law, and must have stated a claim upon which relief may be granted. His Petition sufficiently avers such facts, and does present a claim upon which relief can be granted.

This Court has held that a state correctional inmate has stated a cause of action for which relief can be granted where the inmate has averred that he was transferred to another correctional facility as retaliation for exercising his rights

under the First and Fourteenth Amendments to the United States Constitution.³
Owens. In Owens, this Court expressly found a cause of action to lie for such a retaliatory transfer under, *inter alia*, 42 U.S.C. §1983, notwithstanding the prisoner's failure to expressly cite to Section 1983 in his complaint. We stated:

While nowhere in his complaint did Owens specifically allege that he was bringing his action under 42 U.S.C. §1983, which allows a citizen to challenge conduct by a state official whom he claims has deprived him of his civil rights, Robles v. Pennsylvania Department of Corrections, 718 A.2d 882 (Pa. Cmwlth. 1998), Owens' complaint sounds in a Section 1983 action. Section 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

³The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I. The Fourteenth Amendment to the United States Constitution provides in relevant part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

U.S. Const. amend. XIV, §1.

privileges, or immunities secured by the constitution and laws, shall be liable to the party injured ...”

To state a claim under Section 1983, a plaintiff must 1) allege a violation of rights secured by the United States Constitution and the laws of the United States, and 2) show that the alleged deprivation was committed by a person acting under the color of state law. Anelli v. Arrowhead Lakes Community Association, Inc., 689 A.2d 357 (Pa. Cmwlth. 1997). Owens has made out a prima facie claim under Section 1983 because he has alleged that prison officials deprived him of his constitutional rights.

Owens, 808 A.2d at 610, n.6.

A review of Ray’s Petition in the matter *sub judice*, as well as the Trial Court’s own recitation of the relevant averments within the Petition as articulated above, reveal that Ray has stated an arguable basis in law and in fact, and has indeed stated a claim upon which relief can be granted. As such, the Trial Court’s *sua sponte* dismissal of Ray’s Petition was error. Bailey; Owens.

In the instant appeal, Sobina presents two primary arguments in support of affirming the Trial Court’s dismissal, neither of which are stated within the Trial Court’s Opinion.⁴ First, Sobina argues that Ray has failed to make any

⁴ It is axiomatic, as correctly stated by Sobina, that this Court can affirm a trial court’s judgment on any alternative basis than that stated by the trial court, provided that said basis is clear from the record. Public Advocate and Consumers Education and Protective Association v. City of Philadelphia, 662 A.2d 686 (Pa. Cmwlth. 1995).

specific allegations against Sobina, the only named Respondent in this matter.⁵ We disagree, to the extent that any such express failure supported the Trial Court’s *sua sponte* dismissal. Ray expressly averred that he was transferred from SCI Forest to SCI Greene in retaliation for the exercise of his constitutional rights. Petition at Section II, Paragraphs 6-7; Section V, Paragraphs 10-12. Ray identifies Sobina as the Superintendent of SCI Forest, and in addition to requesting relief that includes his return to his pre-transfer SCI, additionally requests that Sobina be compelled to disclose the basis for that transfer and identify the staff involved therein. *Id.* at Section VI, Paragraphs 1-2. Further, Sobina concedes that he was the superintendent of SCI-Forest. Sobina Brief at 7. As such, we reject Sobina’s argument that Ray has failed to make any specific allegations against Sobina.

Secondly, Sobina argues that neither he, nor his successor at SCI-Forest, can grant the relief sought by Ray. Sobina cites to Mickens v. Jeffes, 453 A.2d 1092 (Pa. Cmwlt. 1983), and Opie v. Glasgow, Inc., 375 A.2d 396 (Pa. Cmwlt. 1977), for the proposition that a state correctional superintendent does not

⁵ Notwithstanding Ray’s listing of Sobina without reference to his capacity as Superintendent of SCI Forest in his Notice of Appeal to this Court, which listing resulted in the caption herein, we emphasize that in his original Petition for Review Ray listed as the named respondent “Raymon [sic] J. Sobina, Superintendent, SCI Forest,” which official capacity of Sobina was also recognized in the Trial Court’s Opinion and Order on remand.

possess state-wide geographic authority to grant the transfer Ray seeks herein. Sobina, however, misstates the holdings of those two precedents, and is unable to cite to any other authority for the proposition advanced.

Mickens, citing to Opie, states that the respondents therein, namely a SCI warden and records officer, are state employees whose functions are geographically confined, and thusly not state-wide in character, for purposes of Commonwealth Court's original jurisdiction pursuant to Section 761 of the Judicial Code, 42 Pa.C.S. §761. As the matter *sub judice*, in its current posture, has not been brought under our original jurisdiction, the holdings of Mickens and Opie as cited by Sobina are inapplicable. Neither of those precedents addresses a SCI superintendent's authority, or lack thereof, to grant the transfer sought herein by Ray. Additionally, Sobina has failed to cite to any other authority, whether statutory or regulatory, in support of his conclusory assertion that Sobina is without the authority to grant the relief requested by Ray. Given Sobina's failure to support his assertion on this point, and the lack of any developed record in this matter, we reject Sobina's argument on this issue. Public Advocate (affirmance of trial court order on alternative basis must be clear from the record).

Accordingly, we vacate the Trial Court's order, and remand the matter for further proceedings.⁶

JAMES R. KELLEY, Senior Judge

⁶ We decline Sobina's request that we stay the instant matter during the pendency of Yount v. Department of Corrections, (Pa. Cmwlth., No. 305 M.D. 2005, filed July 19, 2006), before our Supreme Court. Although Sobina argues that Yount addresses the availability of the remedy of a transfer in retaliatory transfer cases implicating constitutional rights, we conclude that a stay of the instant proceedings is premature. Accord Owens, 808 A.2d at 610-611 (“[T]he state can order officials to take corrective action to remedy a violation of a constitutional or federal right. Therefore, the trial court could order that an inmate be transferred to another prison if it determined that the demotional transfer was retaliatory in violation of the prisoner's constitutional rights. Because the trial court as a state court had jurisdiction to hear a Section 1983 action and could have ordered the transfer of Owens as a form of relief for violation of his constitutional rights if it determined his rights were violated, Owens' complaint was not frivolous.”)

