

APPENDIX

BLD-022

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2309

QUINTEZ TALLEY,
Appellant

v.

TIMOTHY MAZZOCCA; JOHN WETZEL; LT. MORRIS; CAPTAIN SHREDDER;
ATTORNEY GENERAL OFFICE; PA DEPARTMENT OF CORRECTIONS; JOSHUA
GLESSNER; DANIEL MOSES; ROBERT SMITH; GERALD CRISWELL; DEAN
BOWMAN; THOMAS SUCHTA; RONALD HAGG; DUSTIN POPE; TAMMY
FERGUSON; RODNEY CHISM; ROBERT WILLIAMSON; DAVID LINK; KEVIN
MCELWAIN; MICHAEL WORSTELL; MICHAEL LEFEBVRE; KELI M. NEARY;
JOSH SHAPIRO; DR. PILLAI

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00161)
District Judge: Honorable Nora B. Fischer

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 24, 2019

Before: AMBRO, GREENAWAY, Jr., and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on October 24, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered May 8, 2019 be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

APPENDIX A

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: November 27, 2019



**Certified and true copy and issued in lieu
of a formal mandate on January 14, 2020**

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

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

QUINTEZ TALLEY,)
vs.)
Plaintiff,)
vs.)
TIMOTHY MAZZOCCA, *et al.*,)
Defendants.)
Civil Action No. 19-161

MEMORANDUM ORDER

Pending before the Court are the objections by *pro se* Plaintiff Quintez Talley (ECF No. 9), to the April 5, 2019, Report and Recommendation of the Magistrate Judge (ECF No. 6), which recommended that the Complaint be summarily dismissed pre-service for failure to state a claim pursuant to the screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A.

The Court has reviewed the matter and concludes that the Report and Recommendation correctly analyzes the issues and makes a sound recommendation. Upon consideration of the Complaint, together with the Report and Recommendation and objections filed by Plaintiff, and after undertaking a *de novo* review of the record,

IT IS HEREBY ORDERED that Plaintiff's Objections are OVERRULED as they are without merit.

IT IS FURTHER ORDERED that the Complaint is **DISMISSED** for failure to state a claim pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2) and 1915A and leave to amend is **DENIED** as futile.¹

Plaintiff's state law claims are dismissed without prejudice for want of jurisdiction.

IT IS FURTHER **ORDERED** that the Report and Recommendation of the Magistrate Judge, dated April 5, 2019, hereby is **ADOPTED** as the Opinion of the District Court.

The Clerk of Court is **ORDERED** to mark this case closed.

SO ORDERED this 8th day of May, 2019.

/s Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: Honorable Cynthia Reed Eddy
United States Magistrate Judge

QUINTEZ TALLEY
KT 5091
SCI Fayette
48 Overlook Drive
LaBelle, PA 15450-0999
(via U.S. First Class Mail)

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

QUINTEZ TALLEY,)
vs. Plaintiff,)
TIMOTHY MAZZOCCA, *et al.*,) Civil Action No. 19-161
Defendants.)

JUDGMENT

AND NOW, this 8th day of May, 2019, the Court having dismissed this action for reasons set forth in the accompanying Memorandum Order,

IT IS HEREBY ORDERED that final judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.

/s Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: Honorable Cynthia Reed Eddy
United States Magistrate Judge

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APPENDIX C

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

QUINTEZ TALLEY,) Civil Action No. 2: 19-cv-0161
Plaintiff,) United States District Judge
v.) Nora Barry Fischer
TIMOTHY MAZZOCCA, et al,) Chief United States Magistrate Judge
Defendants.) Cynthia Reed Eddy

REPORT AND RECOMMENDATION

I. Recommendation

Upon review of the Complaint, and pursuant to the screening requirements for litigants proceeding *in forma pauperis*, the Court recommends *sua sponte* dismissal of the Complaint before service as such claims are frivolous and fail to state a claim upon which relief can be granted. It is further recommended that leave to amend be denied as it would be futile for Plaintiff to amend his claims.

II. Report

A. Background

The facts that form the basis of the instant case arise from Defendants filing a motion seeking to revoke Talley's *in forma pauperis* status in *Talley v. Pillai*, Civil Action No. 18-cv-1060.¹ In that case, Defendants sought to revoke Talley's authorization to proceed *in forma pauperis* on the grounds that Talley's alleged indigency was a result of his abusive litigiousness.

¹ The motion to revoke Talley's IFP status was denied by the Court on March 2, 2019. The Court notes that in responding to Defendants' motion, Talley raised almost identical arguments to the claims he raises in this new lawsuit.

Defendants argued that Talley had received a payment of \$15,000.00 in joint settlement of two of his Middle District of Pennsylvania lawsuits and that within 18 months he had spent it all, approximately 1/3 of it on his multiple civil litigation cases, and most of the rest on discretionary personal spending. Defendants attached a copy of Talley's DOC monthly account statements to support their argument.

The gist of the instant lawsuit is that in seeking to revoke Talley's IFP status, Defendants inappropriately (i) disclosed the terms of a confidential settlement agreement Talley entered into in 2016 and (ii) obtained and disclosed Talley's inmate account statements without his approval.

Talley alleges that Defendants' conduct amounts to "robbery/ extortion / and taking" of his "property . . . with both the malicious and sadistic intention of converting [his] property for their personal use and defaming Plaintiff's character in both the eyes of the Court and the general public while gaining for both themselves and their enterprises a fraudulently obtained advantage in defending themselves against Plaintiff's claims!" Complaint at ¶ 19.

Plaintiff alleges that Defendants' conduct violates the "Racketeer[] Influenced Corrupt Organization[s] (RICO) Act," the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution under 42 U.S.C. § 1983, and a number of state common laws. He seeks as relief the following: (1) an injunction striking Defendants' Motion to Revoke *In Forma Pauperis* status; (2) a declaration declaring his rights under the settlement agreement entered in the Middle District of Pennsylvania; (3) compensatory damages, comprised of \$250,000.00 for violation of the RICO act; \$75,000.00 for each claim brought under 42 U.S.C. § 1983; and \$20,00000 for each state tort claim; (4) punitive damages, comprised of \$125,000.00 for each claim brought

pursuant to 28 U.S.C. § 1983 and \$20,000.00 for each state tort claim; and (5) any additional relief the Court or jury deems just, equitable, or proper.

Named in the complaint are twenty-four defendants: The Department of Corrections (“DOC”) and eighteen officers or employees of the DOC (collectively referred to as the “Commonwealth Defendants”); The Attorney General’s Office, Josh Shapiro, the Attorney General; Timothy Mazzocca, Deputy Attorney General; Keli M. Neary, Chief Deputy Attorney General, and Dr. Pillai, a DOC psychiatrist. Service of process has not yet been made on defendants.

B. Applicable Legal Principles

This Court has a statutory responsibility to review complaints filed by prisoners and by those who have been granted *in forma pauperis* to determine if the complaint states a valid claim for relief. The Court is required to identify cognizable claims and to *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

Moreover, not only is a court permitted to *sua sponte* dismiss a complaint which fails to state a claim, but it is required to do so by the mandatory language of “the court shall dismiss” utilized by § 1915(e)(2). In performing a court’s mandated function of *sua sponte* reviewing complaints under 28 U.S.C. §§ 1915(e) and 1915A to determine if they fail to state a claim upon which relief can be granted, a federal district court applies the same standard as applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See, e.g., Powell*

C. Discussion

1. *Claims Under the Racketeer Influenced and Corrupt Organizations Act*

Plaintiff argues that “Defendant DOC used wire and/or mail communications to provide Defendant Mazzocca with Plaintiff’s confidential financial information concerning [his] inmate account . . . and that the Settlement Defendants, Davis and Rogers, . . . provided Defendant Mazzocca with Plaintiff’s confidential business information, i.e., the Settlement Agreement by way of wire and/or mail communications. . . subsequently using the Western Districts ECF system as well as the U.S. Postage to file the effect service, . . . violat[ing my] rights, causing injury to both my business and property, committing a RICO Act violation” Complaint at ¶ 22.

The civil RICO statute creates a cause of action for “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.” 18 U.S.C. § 1964(c).

Section 1962 provides, in relevant part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . . (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

In addition to meeting certain constitutional standing requirements, a plaintiff seeking recovery under RICO must satisfy as a threshold matter the following additional standing criterion: (1) that he suffered an injury to his business or property and (2) that the injury was proximately caused by defendants’ racketeering activities. *See Maio v. Aetna*, 221 F.3d 472, 483 (3d Cir. 2000); *Sedima, S.P.R.L. v. Imrex, Co.*, 473 U.S. 479, 496 (1985). Thus, a “plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or

United States Constitution and federal statutes that it describes.” *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). To be afforded remedy in federal court, Talley must prove two elements. First, he must show a “violation of a right secured by the Constitution and laws of the Untied States.” *West v. Atkins*, 487 U.S. 42, 48 (1988). Second, he must “show that he alleged deprivation was committed by a person acting under color of state law.” *Id.* at 48.

Talley argues that Defendants violated his constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments by attaching a copy of his inmate account statements to their motion to revoke IFP status and by disclosing the terms of his “confidential” settlement agreement. These arguments will be addressed seriatim.

A. Alleged Violation of the First Amendment

Talley’s First Amendment claim, *in toto*, is as follows:

When Defendants Rogers, Davis, and the [Settlement Defendants] provided Defendant Mazzocca with Plaintiff’s confidential business information to he (Mazzocca) included within his motion to revoke in forma pauperis status, gaining for themselves an unfair advantage in defending themselves against Plaintiff’s claims, defendants Rogers, Davis, [Settlement Defendants], DOC, Wetzel, Morris, Shredder and Mazzocca violated Plaintiff’s First Amendment right. (and Pillai).

Complaint at 5-6 (quoted verbatim). Plaintiff has alleged no facts which would support a plausible First Amendment claim. As such, the Court recommends that Talley’s First Amendment claims be dismissed with prejudice.

B. Alleged Violation of the Fourth Amendment²

Next, Talley alleges that Defendants' conduct also violated his "right to privacy" under the Fourth Amendment, which provides that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . ." U.S. Const. amend. IV; *see also United States v. Price*, 558 F.3d 270, 277 (3d Cir. 2009) (citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990)). The Supreme Court of the United States has held that

the Fourth Amendment does not proscribe all searches and seizures, but only those that are unreasonable. What is reasonable, of course, depends on all of the circumstances surrounding the search or seizure and the nature of the search and seizure itself. Thus, the permissibility of a particular practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.

Skinner v. Ry Labor Executives' Ass'n, 489 U.S. 602, 619 (1989).

Any argument that Defendants violated his constitutional rights by referencing the terms of a confidential settlement agreement can be easily rejected. Plaintiff fails to recognize that he was the one who actually placed the settlement agreement, in its entirety, in the public record. In Civil Action No. 18-cv-0476, *Talley v. Wetzel*, filed in this Court on April 13, 2018, Talley attached to his complaint the settlement agreement. (See Civil Action No. 18-cv-0476, ECF 1-3). Additionally, Talley again placed the full settlement agreement in the public record when he

² Talley also states that he is bringing a conspiracy claim pursuant to 42 U.S.C. § 1983. *See* Complaint at n.4 and n.5. A § 1983 conspiracy claim, however, is viable only if there has been an actual deprivation of a constitutional or federal statutory right. *Sweetman v. Borough of Norristown, PA*, 554 F. App'x 86, 90 (3d Cir. 2018) (citing *Andree v. Ashland Cnty.*, 818 F.2d 1306, 1311 (7th Cir. 1987)). Talley has not advanced any argument that would support a claim for conspiracy as he has failed to establish a violation of his constitutional rights. Absent a deprivation of a violation of his constitutional rights, his § 1983 claim fails as a matter of law.

163 (1998). In a Takings Clause analysis, the Court must first determine whether the plaintiff possesses a constitutionally protected property interest; then if he does, whether the property was “taken” for public use and, finally, whether the plaintiff received just compensation. *Id.* at 156. It appears that Talley is asserting that he has a protectable property interest in his inmate account statements and in the terms of his settlement agreement.

Although the funds in an inmate account are a protectable property interest, information about such accounts is not a recognized protectable property interest. *See Kimberlin v. United States Dep’t of Justice*, 788 F.2d 434, 438-39 (7th Cir. 1986) (rejecting due process claim for probation officer’s disclosures regarding transfer of funds from inmate account because “[t]he only cognizable property interest at stake here is the loss of the money or the use of the money in the commissary account.”). Further, as stated above, Talley has no cognizable “privacy” claim about the release of the terms of his settlement agreement, when he in fact was the one who first put the terms in the public record.

For these reasons, it is recommended that Talley’s claims brought under the Fifth Amendment be dismissed for failure to state a claim.

D. Alleged Violation of the Fourteenth Amendment

Last, Talley alleges that Defendants’ conduct violated his “Due Process” and “Privacy” rights under the Fourteenth Amendment. To plead a procedural due process violation, a plaintiff must allege two elements: (i) the plaintiff has a “liberty or property interest which has been interfered with by the State”; and (ii) the procedures employed to deprive the plaintiff of liberty or property were constitutionally insufficient. *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). As Talley has no protectable property interest in his inmate account statement, his

Fourteenth Amendment claim fails as it pertains to his inmate account statement. *See Kimberlin v. United States Dep't of Justice*, 788 F.2d 434, 438-39 (7th Cir. 1986).

Similarly, it is recommended that Talley's allegations that Defendants improperly disclosed the terms of his settlement agreement in violation of his Fourteenth Amendment rights be dismissed as well. As discussed above, Talley was the person who first put the terms in the public record.

Accordingly, it is recommended that Talley's claims brought under the Fourteenth Amendment be dismissed for failure to state a claim.

E. Claims Arising Under State Law

In Paragraphs 24 and 25 of his Complaint, Plaintiff states he is bringing a "state tort claim of (1) extortion, (2) conversion, (3) legal malpractice, and (4) conspiracy."

A district court may decline to exercise supplemental jurisdiction over state law claims if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1337. However, the Court of Appeals for the Third Circuit has recognized, "where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (quoting *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)) (emphasis in original). Here, it is recommended that all of Plaintiff's federal claims - that is, all claims over which the district court had original jurisdiction be dismissed. Considerations of judicial economy, convenience, and fairness do not provide an affirmative justification for maintaining Talley's state law claims. *Shaffer v. Bd. of*

Sch. Dir. of Albert Gallatin Area S.D., 730 F.2d 910, 912-13 (3d Cir. 1984) (noting that “time already invested in litigating the state cause of action is an insufficient reason to sustain the exercise of pendent jurisdiction” and that “decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law”). As such, the Court recommends that Talley’s state law claims be dismissed without prejudice for want of jurisdiction. *See Burnsworth v. PC Lab.*, 364 F. App’x 772, 776 (3d Cir. 2010) (affirming a district court’s decision to decline supplemental jurisdiction over state law claims when the federal claims had been dismissed); *Alexander v. New Jersey State Parole Bd.*, 160 F. App’x 249, 251 (3d Cir. 2005) (same).

F. Leave to File Amended Complaint Would Be Futeile

The United States Court of Appeals for the Third Circuit has held that, in civil rights cases, a court must give a plaintiff the opportunity to amend a deficient complaint - regardless of whether the plaintiff requests to do so - when dismissing a case for failure to state a claim, unless doing so would be inequitable or futile. *See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

Given that Plaintiff’s claims are frivolous, the Court recommends that leave to amend be denied as it would be futile for Plaintiff to amend his claims.

III. Conclusion

For the reasons set forth herein, it is respectfully recommended that the Complaint be dismissed for failure to state a claim and as frivolous pursuant to the screening provisions of the 28 U.S.C. §§ 1915(e)(2) and 1915A.

Plaintiff is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, must file objections to this Report and Recommendation by **April 25, 2019**. Plaintiff is cautioned that failure to file Objections within this timeframe “will waive the right to appeal.” *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

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

Dated: April 5, 2019

cc: QUINTEZ TALLEY
KT 5091
SCI Fayette
48 Overlook Drive
LaBelle, PA 15450-0999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2309

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00161)
District Judge: Honorable Nora B. Fischer

Before: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, Jr., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY and PHIPPS, Circuit Judges

SUR PETITION FOR REHEARING

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing and a majority of the judges of the

APPENDIX E

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court *en banc*, is denied.

By the Court,

s/ Thomas L. Ambro, Circuit Judge

Dated: January 6, 2020
Tmm/cc: Quintez Talley