CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X _____

Date: NOVEMBER 1, 2020

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6438

ROBERT T. SIGLER,

Plaintiff - Appellant,

v.

JIMMY THORNTON; SAMPSON COUNTY SHERIFF; SAMPSON COUNTY,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:19-ct-03318-D)

Submitted: July 21, 2020 Decided: July 24, 2020

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Robert T. Sigler, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert T. Sigler appeals the district court's order dismissing as frivolous his 42 U.S.C. § 1983 (2018) complaint and denying his motions for summary judgment and injunctive relief. We have reviewed the record and find no reversible error. Accordingly, we affirm substantially for the reasons stated by the district court.* *Sigler v. Thornton*, No. 5:19-ct-03318-D (E.D.N.C. Mar. 6, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* We conclude that Sigler's transfer from the detention center rendered his request for injunctive relief moot.

FILED: July 24, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6438
(5:19-ct-03318-D)

ROBERT T. SIGLER

Plaintiff - Appellant

v.

JIMMY THORNTON; SAMPSON COUNTY SHERIFF; SAMPSON COUNTY

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APP. B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CT-3318-D

ROBERT T. SIGLER, Plaintiff,	)	
v.	)	**ORDER**
JIMMY THORNTON, et al., Defendants.	)	

On November 1, 2019, Robert T. Sigler[1] ("Sigler" or "plaintiff"), a state inmate proceeding pro se and in forma pauperis, filed a complaint naming Sampson County and the Sampson County Sheriff as defendants [D.E. 1, 5, 10]. On November 12, 2019, in response to an order directing him to do so [D.E. 3], Sigler refiled his complaint on the form prescribed for use in this district [D.E. 5]. Sigler moves for a preliminary and permanent injunction [D.E. 6, 14] and for default and summary judgment [D.E. 11, 13]. As explained below, the court dismisses the action and denies Sigler's motions.

I.

When a prisoner seeks relief in a civil action from a governmental entity or officer, a court must review and dismiss the complaint if it is "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a), (b)(1). A frivolous case "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). "Legally frivolous claims are based on an indisputably meritless legal theory and include claims of infringement of a

[1] Sigler's filings appear to be in the unusual and recognizable handwriting of another inmate, David Lee Smith, who is a familiar litigant to the court.

APP. A

legal interest which clearly does not exist." Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quotations omitted). Factually frivolous claims lack an "arguable basis" in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of a pleading is flexible, "and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (emphasis and quotation omitted). Erickson, however, does not undermine the "requirement that a pleading contain 'more than labels and conclusions.'" Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)); see Ashcroft v. Iqbal, 556 U.S. 662, 677–83 (2009); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 566 U.S. 30 (2012); Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255–56 (4th Cir. 2009); Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009).

On January 15, 2019, Sigler pleaded guilty in Sampson County Superior Court to second-degree forcible rape and indecent liberty with a child and was sentenced to 89–177 months' imprisonment. See N.C. Dep't of Pub. Safety, Offender Pub. Info., https://webapps.doc.state.nc.us/opi/offendersearch.do?method=view (search by inmate number) (last visited Mar. 5, 2020). The allegations of Sigler's complaint arose while he was a pretrial detainee at the Sampson County Detention Center. Specifically, Sigler alleges that from May 14, 2018, to January 15, 2019, defendants "in conspiracy housed plaintiff and his class in 4-man cells[] that were designed for only 2 men[]" and Sigler "occasionally had to sleep on floor mattress under a bunk or . . . out in the 6' x 8' cell's walk way." [D.E. 5] 5–6.[2] Sigler also alleges that he "was housed with regular detainees

[2] To the extent Sigler seeks to proceed as a class action, see [D.E. 1] 1, [D.E. 5] 1, 5, Sigler may not assert any claim on behalf of another person, and may not represent a class while proceeding

when he was in protective custody[]" and that he received "30 minutes of recreation weekly[]" along with "3-showers weekly and (1) set of clothing." Id. at 6. Sigler alleges that these conditions "unconstitutionally exposed [him] to an unsafe environment of communicable diseases, increase in stress, increase in tension and confrontation between detainees of unconstitutional levels." Id. at 7. Sigler does not allege that he contracted any disease or that any other detainee assaulted him. Sigler names Sampson County and Sheriff Thornton as defendants and seeks injunctive relief, compensatory damages, and "pun[i]tive damages of $25[,]000,000 dollars." Id. at 3, 8.

"To state a claim under [section] 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988); see Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Additionally, a section 1983 plaintiff must plausibly allege the personal involvement of a defendant. See, e.g., Iqbal, 556 U.S. at 676; Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691–92 (1978); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

Courts evaluate confinement conditions of pretrial detainees under the Due Process Clause of the Fourteenth Amendment, rather than under the Eighth Amendment. See, e.g., Kingsley v. Hendrickson, 135 S. Ct. 2466, 2475 (2015); Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979). As a practical matter, the Due Process Clause analysis is materially indistinguishable from the Eighth Amendment analysis. See, e.g., Brown v. Harris, 240 F.3d 383, 388–89 (4th Cir. 2001); Riley v. Dorton, 115 F.3d 1159, 1166–67 (4th Cir. 1997) (en banc), abrogated on other grounds by Wilkins

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pro se. See, e.g., Myers v. Loudoun Cty. Pub. Sch., 418 F.3d 395, 400 (4th Cir. 2005); Lescs v. Martinsburg Police Dep't, 138 F. App'x 562, 564 (4th Cir. 2005) (per curiam) (unpublished); Fowler v. Lee, 18 F. App'x 164, 165 (4th Cir. 2001) (per curiam) (unpublished); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) (per curiam).

v. Gaddy, 559 U.S. 34 (2010) (per curiam); Hill v. Nicodemus, 979 F.2d 987, 990–92 (4th Cir. 1992). Thus, to state a prima facie case that pretrial confinement conditions violate the Due Process Clause, "a plaintiff must show both (1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials." Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir. 1993) (quotation omitted); see Grayson v. Peed, 195 F.3d 692, 695 (4th Cir. 1999). "[T]he first showing requires the court to determine whether the deprivation of the basic human need was objectively sufficiently serious." Strickler, 989 F.2d at 1379 (emphasis and quotation omitted). The second showing "requires [the court] to determine whether subjectively the officials acted with a sufficiently culpable state of mind." Id. (emphasis, alteration, and quotation omitted).

To satisfy the subjective showing, a plaintiff must prove that the official acted with deliberate indifference. See, e.g., Johnson v. Quinones, 145 F.3d 164, 167 (4th Cir. 1998); Strickler, 989 F.2d at 1379.[3] "While . . . deliberate indifference entails something more than mere negligence, . . . it is

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[3] In Kingsley, the Supreme Court held that "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." 135 S. Ct. at 2473. The Second, Seventh, Ninth, and Tenth Circuits "have viewed Kingsley's holding as establishing that an objective inquiry applies to a variety of conditions-of-confinement claims, not just those involving excessive force." Hardeman v. Curran, 933 F.3d 816, 823 (7th Cir. 2019); see, e.g., Colbruno v. Kessler, 928 F.3d 1155, 1161–63 (10th Cir. 2019); Gordon v. Cty. of Orange, 888 F.3d 1118, 1120, 1122–25 (9th Cir. 2018); Darnell v. Pineiro, 849 F.3d 17, 34–35 (2d Cir. 2017). "The Eighth, Eleventh, and Fifth Circuits have chosen to confine Kingsley to its facts—that is, to Fourteenth-Amendment claims based on excessive-force allegations in a pretrial setting." Miranda v. Cty. of Lake, 900 F.3d 335, 352 (7th Cir. 2018); see, e.g., Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018); Dang by & through Dang v. Sheriff, Seminole Cty., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); Alderson v. Concordia Parish Corr. Facility, 848 F.3d 415, 419 n.4 (5th Cir. 2017). The Fourth Circuit has not yet applied the holding in Kingsley to claims other than for excessive force. See Dilworth v. Adams, 841 F.3d 246, 255 (4th Cir. 2016); Beale v. Madigan, 668 F. App'x 448, 449 (4th Cir. 2016) (per curiam) (unpublished); Duff v. Potter, 665 F. App'x 242, 244 (4th Cir. 2016) (per curiam) (unpublished); Simpson v. Coleman, No. 5:17-CT-3233-FL, 2019 WL 4308990, at *3 n.3 (E.D.N.C. Sept. 11, 2019) (unpublished); Adams v. New Hanover Det. Ctr., No. 5:16-CT-3020-D, 2017 WL 7513347, at *2 n.1 (E.D.N.C. June 30, 2017); cf. Lanier v. Henderson Cty. Det. Ctr.,

satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." Farmer v. Brennan, 511 U.S. 825, 835 (1994). An official acts with deliberate indifference when he actually knows of and disregards "an objectively serious condition, medical need, or risk of harm." Rish v. Johnson, 131 F.3d 1092, 1096 (4th Cir. 1997); see Farmer, 511 U.S. at 837–38; Estelle v. Gamble, 429 U.S. 97, 104–05 (1976); Waybright v. Frederick Cty., 528 F.3d 199, 206 (4th Cir. 2008).

Singler does not plausibly allege a serious deprivation of a basic need. See Smith v. Whitley, No. 5:17-CV-70374, 2018 WL 2770207, at *5 (W.D. Va. June 8, 2018) (unpublished) (collecting cases); Young v. Bishop, No. CV TDC-16-0242, 2017 WL 784664, at *6–7 (D. Md. Feb. 28, 2017) (unpublished); Oliver v. Butler, No. 5:12-CT-3060-FL, 2015 WL 846755, at *6–7 (E.D.N.C. Feb. 26, 2015) (unpublished); Graham v. Thompson, No. 2:10-755-HFF-RSC, 2010 WL 3604933, at *4 (D.S.C. Aug. 5) (unpublished), report and recommendation adopted, 2010 WL 3604886 (D.S.C. Sept. 13, 2010) (unpublished). Thus, the court dismisses the complaint as frivolous.

As for Sigler's motions for a temporary restraining order or a preliminary or permanent injunction, the court has considered the motions under the governing standard. See, e.g., Fed. R. Civ. P. 65(a)–(b); Benisek v. Lamone, 138 S. Ct. 1942, 1943–45 (2018) (per curiam); Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Real Truth About Obama, Inc. v. FEC, 575 F.3d 342, 346 (4th Cir. 2009), vacated, 559 U.S. 1089 (2010), reissued in relevant part, 607 F.3d 355 (4th Cir. 2010) (per curiam). Sigler has not plausibly alleged that he is likely to succeed on the merits, that he is likely to suffer irreparable harm absent injunctive relief, that the balance of equities tips in his

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No. 1:15-CV-262-FDW, 2016 WL 7007537, at *2 n.3 (W.D.N.C. Nov. 29, 2016) (unpublished) ("The Supreme Court in Kingsley did not explicitly extend the objective reasonableness standard for excessive force claims to other claims brought by pretrial detainees, including deliberate indifference claims.").

favor, or that an injunction is in the public interest. Thus, the court denies the motions.

As for Sigler's motions for summary judgment and entry of default, the motions are premature. An entry of default shall be made when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). A defendant is not required to answer until after the defendant has been served with the summons and complaint. See Fed. R. Civ. P. 12(a). Because defendants have not been served with the summons and complaint, no answer is due. Therefore, the court denies the motions.

II.

In sum, the court DISMISSES the complaint [D.E. 1, 5] as frivolous and DENIES plaintiff's motions [D.E. 6, 11, 13–14]. The clerk shall close the case.

SO ORDERED. This 6 day of March 2020.

JAMES C. DEVER III
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501, Richmond, Virginia 23219

October 20, 2020

LOCAL RULE 40(d) NOTICE

No. 20-1205, In re: Robert Sigler
5:19-ct-03318-D

TO: Robert T. Sigler

We are in receipt of your papers in this case.

This court's Local Rule 40(d) states that, except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the office of the clerk shall not receive motions or other papers requesting further relief in a case after the court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

Pursuant to the provisions of Local Rule 40(d), no further action will be taken in this matter by this court. A petition for writ of certiorari may be filed in the Office of the Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543-0001, within 90 days of this court's entry of judgment or, if a timely petition for panel or en banc rehearing was filed, denial of rehearing. Additional information on filing a petition for writ of certiorari is available on the Supreme Court's website, www.supremecourt.gov, or from the Supreme Court Clerk's Office at (202) 479-3000.

Cyndi Halupa, Deputy Clerk
804-916-2704