IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PAUL E. WEBER,	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	Civ. No. 18-637-LPS
	:	
AMY ARNOTT QUINLAN et al.,	:	
	:	
Defendants.	:	
	:	

Paul E. Weber, James T. Vaughn Correctional Center, Smyrna, Delaware, Pro Se Plaintiff.

MEMORANDUM OPINION

June 11, 2018
Wilmington, Delaware

A1

STARK, U.S. District Judge:

I. INTRODUCTION

Plaintiff Paul E. Weber ("Plaintiff"), an inmate at the James T. Vaughn Correctional Center in Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983.[1] (D.I. 1) He filed a "supplemental complaint" on May 18, 2018. (D.I. 7) Plaintiff appears *pro se* and has paid the filing fee. The Court proceeds to review and screen the matter pursuant to 28 U.S.C. § 1915A(a). Section 1915A(b)(1) is applicable to all prisoner lawsuits regardless of whether the litigant has paid the fee all at once or in installments. *See Stringer v. Bureau of Prisons, Federal Agency*, 145 F. App'x 751, 752 (3d Cir. Aug. 23, 2005). Plaintiff has also filed numerous motions for injunctive relief as well as a motion for a scheduling order. (D.I. 11, 14, 15, 21, 22)

II. BACKGROUND

In July 2002, Plaintiff was convicted by a jury of forgery in the second degree and misdemeanor theft; he was sentenced to 30 days of Level V incarceration for each conviction.[2] *See In the Matter of the Petition of Paul E. Weber for a Writ of Mandamus*, 2018 WL 2446803 (Del. May 30, 2018). The Delaware Supreme Court dismissed Plaintiff's direct appeal of the conviction based on its lack of jurisdiction to hear a criminal appeal unless the sentence imposed is a term of imprisonment exceeding one month or a fine exceeding $100. *See Weber v. State*, 2002 WL 31235418, at *1 (Del. Oct. 4, 2002) (citing Del. Const. art IV, § 11(1)(b)). In 2005, Plaintiff was convicted of

[1] When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

[2] The exact year of the conviction is not clear. The Complaint states Plaintiff was convicted in July 2002, *see* D.I. 1 at ¶ 20; Plaintiff's direct appeal to the Delaware Supreme Court states that he was convicted in July 2000, *see Weber v. State*, 2002 WL 31235418, at *1 (Del. Oct. 4, 2002); and later, when ruling on the habitual offender status issue, the Delaware Supreme Court stated that Plaintiff was convicted in 2001, *see Weber v. State*, 971 A.2d 135, 158 (Del. 2009).

A2

attempted robbery in the first degree and attempted carjacking in the first degree; the Delaware Superior Court granted the State's petition to declare Plaintiff an habitual offender under 11 Del C. § 4214(a). *See In the Matter of the Petition of Paul E. Weber for a Writ of Mandamus*, 2018 WL 2446803 at *1. Plaintiff's forgery in the second degree conviction was one of the predicate offenses. *See id.* Plaintiff appealed and argued that forgery in the second degree did not qualify as a predicate offense under 11 Del. C. § 4214(a) because he had no right to appeal. *See id.* The Delaware Supreme Court held that the forgery in the second degree was a qualifying offense under § 4214(a) and the unavailability of a direct appeal did not change this result. *See Weber v. State*, 971 A.2d at 158-60. The Delaware Supreme Court noted that Plaintiff could have filed a motion to correct an illegal sentence under Superior Court Criminal Rule 35(a) or a petition for a writ of certiorari. *See id.* at 159-60. It reversed the attempted robbery in the first degree conviction on other grounds, remanded for a new trial, and affirmed the attempted carjacking in the first degree conviction. *See id.* at 143.

Plaintiff was retried upon remand in April 2010 and convicted of attempted robbery in the first degree. *See State v. Weber*, 2017 WL 3638209 (Del. Super. Aug. 22, 2017). Once again, the State filed a motion to declare Plaintiff an habitual offender under § 4214(a). *See id.* The Superior Court granted the motion, and Plaintiff was sentenced to twenty-five years of Level V incarceration for attempted robbery in the first degree. *See id.*

Plaintiff alleges that he is factually and legally innocent of forgery in the second degree and was denied his constitutional right to a fair trial. (D.I. 1 at ¶¶ 21, 25) He alleges that he did not have the remedy of appeal under the Delaware Constitution, could not challenge his sentence under the Delaware Constitution or Delaware law, could not challenge the forgery conviction under Delaware Superior Court Criminal Rules 35(a) or 61, and could not challenge his conviction by means of

A3

certiorari. (*Id.* at ¶¶ 32-36) He alleges that the forgery conviction was used for the purposes of sentencing enhancement and, without the forgery conviction, his sentence would have been three years instead of the twenty-five year sentence he received. (*Id.* at ¶¶ 42-45) Plaintiff alleges the postconviction procedures adopted, promulgated, implemented, and/or utilized by Defendants transgress inherent principles of justice and fundamental fairness and are inadequate to vindicate his substantive rights and redress injustice to him. (*Id.* at ¶ 47) Plaintiff alleges that on April 13, 2018 he issued a final demand to Defendants to provide him with an adequate and meaningful remedy to challenge his forgery conviction. (*Id.* at ¶ 52)

Plaintiff filed a *pro se* motion for postconviction relief of the 2010 conviction on August 6, 2013. *See State v. Weber*, 2017 WL 3638209 (Del. Super. Aug. 22, 2017). The matter was stayed and counsel was appointed to represent Plaintiff through the postconviction process. *See id.* Appointed counsel filed an amended motion for postconviction relief on March 24, 2017. *See id.* Thereafter, the matter was referred to a Commissioner for a report and recommendation, who recommended on August 22, 2017 that the motion for postconviction relief be denied. *See id.* On March 6, 2018, the Superior Court adopted the Commissioner's report and denied Plaintiff's motion for postconviction relief. *See Weber v. State*, 168, 2018 (Del.) at appellant's May 30, 2018 amended opening brief at Ex. B. On April 2, 2018, Plaintiff appealed the March 6, 2018 order to the Delaware Supreme Court. *See id.* at Apr. 2, 2018 notice of appeal. The appeal remains pending.

Plaintiff alleges violations of the United States Constitution and the Delaware Constitution. He seeks declaratory and injunctive relief as well as compensatory and punitive damages. Defendants named in the original complaint have waived service of summons. (*See* D.I. 8)

A4

III. SUPPLEMENTAL COMPLAINT

On May 18, 2018, Plaintiff filed a motion for leave to file a supplemental complaint; it was docketed as a supplement to the complaint. (D.I. 7) It adds Mike Little ("Little") and Timothy T. Martin ("Martin") as defendants and alleges violations of Plaintiff's right to access to the courts. Plaintiff has also filed motions for injunctive relief and other documents with regard to the access to the courts claims. (*See* D.I. 11, 12 13, 14, 15, 17, 21)

The Court has reviewed the supplemental complaint and its claims against Little and Martin. The claims are only tangentially related to the original complaint at Docket Item 1. The Court considers the supplemental complaint an attempted to join unrelated defendants and claims in violation of Fed. R. C. P. 20(a)(2), which states, in pertinent part, as follows:

> Persons may . . . be joined in one action as defendants if any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action.

A review of the supplemental complaint reveals that there are not common questions of law and fact to all defendants. Therefore, the Clerk of Court will be directed to open a new case with the caption "Paul E. Weber, Plaintiff, v. Michael S. Little and Timothy T. Martin, Defendants." The complaint in the newly-opened case will be the supplemental complaint (D.I. 7) and all filings related to the supplemental complaint (D.I. 11, 12, 13, 14, 15, 17, 18, 19, 20, 21) will be filed in the new case. The motions will not be considered in the instant case, Civ. No. 18-634-LPS.

The Court observes that Little and Martin have waived service of summons and counsel has entered an appearance. Little and Martin will not be required to file an answer or otherwise plead to the complaint or respond to any motions (D.I. 11, 14, 15, 21) until the Court screens the complaint in the newly-opened case pursuant to the Prison Litigation Reform Act.

A5

IV. LEGAL STANDARDS

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915A(b) if "the action is frivolous or 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." *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013); *see also* 28 U.S.C. § 1915A (actions in which prisoner seeks redress from governmental defendant). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *See Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Plaintiff proceeds *pro se*, his pleading is liberally construed and his Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson*, 551 U.S. at 94 (citations omitted).

An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915A(b)(1), a court may dismiss a complaint as frivolous if it is "based on an indisputably meritless legal theory" or a "clearly baseless" or "fantastic or delusional" factual scenario. *Neitzke*, 490 at 327-28; *see also Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate's pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915A(b)(1) is identical to the legal standard used when deciding Rule 12(b)(6) motions. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the

screening provisions of 28 U.S.C. § 1915A, the Court must grant a plaintiff leave to amend his complaint, unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A complaint may be dismissed only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Though "detailed factual allegations" are not required, a complaint must do more than simply provide "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Davis v. Abington Mem'l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (internal quotation marks omitted). In addition, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See Williams v. BASF Catalysts LLC*, 765 F.3d 306, 315 (3d Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Twombly*, 550 U.S. at 570). Finally, a plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, __U.S.__, 135 S.Ct. 346, 347 (2014). A complaint may not dismissed for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 346.

Under the pleading regime established by *Twombly* and *Iqbal*, a court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, the court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *See Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). Elements are sufficiently alleged when the facts in the complaint "show" that the plaintiff is entitled to relief. *See Iqbal*, 556 U.S. at 679

(citing Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

V. DISCUSSION

A. Statute of Limitations

As discussed above, Plaintiff was convicted of forgery in the second degree in July 2002. Since then he has sought to challenge that conviction on numerous occasions, and has raised the issue numerous times, most notably after 2005 when he was convicted in another criminal case (later retried in 2010) and deemed an habitual offender under Delaware law. In 2009, when Plaintiff filed a direct appeal on the 2005 robbery conviction, the Delaware Supreme Court addressed the issue of whether Plaintiff's second degree forgery conviction qualified as a predicate offense. *See Weber v. State*, 971 A.2d 135. The Delaware Supreme Court noted that Plaintiff had relief available to challenge the forgery conviction because he could have filed a motion to correct an illegal sentence under Superior Court Criminal Rule 35(a) or sought certiorari review of the forgery conviction. *See Weber v. State*, 971 A.2d at 158-60.

The instant complaint, filed on April 26, 2018, seeks relief under 42 U.S.C. § 1983. For purposes of the statute of limitations, § 1983 claims are characterized as personal injury actions. *See Wilson v. Garcia*, 471 U.S. 261, 275 (1983). In Delaware, § 1983 claims are subject to a two-year limitations period. *See* 10 Del. C. § 8119; *Johnson v. Cullen*, 925 F. Supp. 244, 248 (D. Del. 1996). Section 1983 claims accrue "when the plaintiff knew or should have known of the injury upon which its action is based." *Sameric Corp. v. City of Philadelphia*, 142 F.3d 582, 599 (3d Cir. 1998).

The statute of limitations is an affirmative defense that generally must be raised by the defendant, and it is waived if not properly raised. *See Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.*, 435 F.3d 396, 400 n.14 (3d Cir. 2006); *Fassett v. Delta Kappa Epsilon*, 807

A8

F.2d 1150, 1167 (3d Cir. 1986). "[W]here the statute of limitations defense is obvious from the face of the complaint and no development of the factual record is required to determine whether dismissal is appropriate, *sua sponte* dismissal under 28 U.S.C. § 1915 is permissible." *Davis v. Gauby*, 408 F. App'x 524, 526 (3d Cir. Nov. 30, 2010) (internal quotation marks omitted).

Here, the Delaware Supreme Court advised Plaintiff in its April 22, 2009 opinion what steps he could have taken to challenge the forgery conviction as not qualifying as a predicate offense under 11 Del. C. § 4214(a). Despite this notice, Plaintiff did not file the instant complaint until April 26, 2018, some nine years after the April 22, 2009 decision. Hence, it is evident from the face of the Complaint that Plaintiff's claims are barred by the two-year limitations period.[3]

Because Plaintiff's allegations are time-barred, the Court will dismiss the Complaint as legally frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

B. Habeas Corpus

In addition, to the extent that Plaintiff attempts to challenge his 2010 conviction and/or sentence wherein he was deemed an habitual offender using the forgery in the second degree as a predicate offense, his sole federal remedy for challenging the fact or duration of his confinement is by way of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973); *see also Torrence v. Thompson*, 435 F. App'x 56 (3d Cir. June 3, 2011). A plaintiff cannot recover under § 1983 for alleged wrongful incarceration unless he proves that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such

[3] Given his numerous filings in the Delaware Courts and rulings made therein, it appears that Plaintiff's claims may also be barred by reason of issue preclusion (collateral estoppel) or claim preclusion (res judicata). *See e.g., Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006); *Morgan v. Covington Twp.*, 648 F.3d 172, 178 (3d Cir. 2011). The Court need not decide these issues.

A9

determination, or called into question by a federal court's issuance of a writ of habeas corpus. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

In *Heck*, the Supreme Court held that where success in a § 1983 action would implicitly call into question the validity of conviction or duration of sentence, the plaintiff must first achieve favorable termination of his available state or federal habeas remedies to challenge the underlying conviction or sentence. Considering *Heck* and summarizing the interplay between habeas and § 1983 claims, the Supreme Court explained that, "a state prisoner's § 1983 action is barred (absent prior invalidation) -- no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings) -- if success in that action would necessarily demonstrate the invalidity of the confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

The Court takes judicial notice that the 2010 conviction and sentence have not been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

VI. CONCLUSION

For the above reasons, the Court will dismiss the Complaint (D.I. 1) as legally frivolous pursuant 28 U.S.C. § 1915A(b)(1). Amendment is futile. All pending motions (D.I. 11, 14, 15, 21, 22) will be denied as moot. In addition, the Court will direct the Clerk of Court to open a new case with the caption "Paul E. Weber, Plaintiff, v. Michael S. Little and Timothy T. Martin, Defendants." The complaint in the newly-opened case will be the supplemental complaint (D.I. 7) and the following filings (D.I. 11, 12, 13, 14, 15, 17, 18, 19, 20, 21) will be filed in the new case. Little and Martin will not be required to file an answer or otherwise plead to the complaint in the newly-

A10

opened case or respond to any motion until the Court screens the complaint in the newly-opened case pursuant to the Prison Litigation Reform Act.

An appropriate Order will be entered.

A11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAUL E. WEBER,	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	Civ. No. 18-637-LPS
	:	
AMY ARNOTT QUINLAN et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

At Wilmington, this 11th day of June 2018, consistent with the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that:

1. The Complaint (D.I. 1) is DISMISSED as legally frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Amendment is futile.

2. All pending motions are DENIED as moot. (D.I. 11, 14, 15, 21, 22)

3. The Clerk of Court is directed to OPEN a new case. The case caption shall be "Paul E. Weber, Plaintiff, v. Michael S. Little and Timothy T. Martin, Defendants." The complaint shall be the supplemental complaint found at Docket Item 7. Docket Items 11, 12, 13, 14, 15, 17, 18, 19, 20, 21) shall be filed in the new case. Little and Martin are not be required to file an answer or otherwise plead to the complaint in the newly-opened case or respond to any motion until the Court screens the complaint in the newly-opened case pursuant to the Prison Litigation Reform Act and/or orders them to do so.

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

A12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAUL E. WEBER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 18-637-LPS
	:	
AMY ARNOTT QUINLAN, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

1. **Introduction.** Plaintiff Paul E. Weber ("Plaintiff"), an inmate at the James T. Vaughn Correctional Institution in Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983. He appears *pro se* and has paid the filing fee. On June 12, 2018, the Court screened the Complaint pursuant to 28 U.S.C. § 1915A(a) and dismissed it as legally frivolous. (D.I. 23, 24) On July 2, 2018, Plaintiff filed a motion for reconsideration. (D.I. 27) He has also filed a motion for extension of time to file a motion for reconsideration,[1] a motion for extension of time to file notice of appeal, a motion for oral argument, and a motion for leave to amend. (D.I. 25, 26, 28, 31)

2. **Motion for Reconsideration.** The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). "A proper Rule 59(e) motion . . . must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) (citing *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)).

[1] Because the motion for reconsideration was filed within the required 28-day time frame (*see* Fed. R. Civ. P. 59(e)), the motion for enlargement of time for its filing is moot.

31

3. Plaintiff argues the Court has mischaracterized and misconstrued his claim, and his claim is not time-barred because it alleges a continuing constitutional violation. (D.I. 27) Plaintiff's motion fails on the merits because he has not set forth any intervening changes in the controlling law; new evidence; or clear errors of law or fact made by the Court in its screening order that dismissed the Complaint as time-barred. *See Max's Seafood Café*, 176 F.3d at 677. For these reasons, the motion for reconsideration will be denied. (D.I. 27) Plaintiff's motion for oral argument and motion for leave to amend the complaint (D.I. 28, 31) will be denied as moot.

4. **Motion to Extend Time to Appeal.** On June 29, 2018, Plaintiff filed a motion for an extension of time to file a notice of appeal. (D.I. 26) The motion seeks a thirty day extension. The Court entered an order on June 12, 2018 dismissing this case as legally frivolous. (D.I. 24) Subject to certain exceptions, a notice of appeal must be filed within thirty days from the disputed order's entry date. *See* Fed. R. App. P. 4(a)(1)(A). However, a motion for reconsideration under Federal Rule of Civil Procedure 59 will toll the time for filing a notice of appeal if it is filed within twenty-eight days of entry of the order. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Here, Plaintiff's motion for reconsideration of the June 12, 2018 Order was filed on July 2, 2018, within the twenty-eight day time period. (*See* D.I. 26) Therefore, the filing of the motion for reconsideration tolled the time to appeal. Plaintiff's thirty days to file a notice of appeal will begin to run from entry of the order disposing of the motion for reconsideration (D.I. 27) that is discussed above in this memorandum. *See* Fed. R. App. P. 4(a)(1)(A). Plaintiff's motion for an extension of time to appeal is unnecessary, and, therefore, the motion will be denied. (D.I. 26)

5. **Conclusion.** The Court will: (1) deny as moot Plaintiff's motion for extension of time to file a motion for reconsideration (D.I. 25); (2) deny as unnecessary Plaintiff's motion for thirty day extension of time to file a notice of appeal (D.I. 26); (3) deny Plaintiff's motion for reconsideration (D.I. 27); (4) deny as moot Plaintiff's motion for oral argument (D.I. 28); and

(5) deny as moot Plaintiff's motion for leave to amend complaint (D.I. 31).

An appropriate order will be entered.

July 11th, 2018
Wilmington, Delaware

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

33

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAUL E. WEBER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 18-637-LPS
	:	
AMY ARNOTT QUINLAN, et al.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 11th day of July, 2018, for the reasons set forth in the memorandum issued this date;

IT IS ORDERED that:

1. Plaintiff's motion for extension of time to file a motion for reconsideration is DENIED as moot. (D.I. 25)

2. Plaintiff's motion for a thirty day extension of time to file notice of appeal is DENIED as unnecessary. (D.I. 26)

3. Plaintiff's motion for reconsideration is DENIED. (D.I. 27)

4. Plaintiff's motion for oral argument is DENIED as moot. (D.I. 28)

5. Plaintiff's motion for leave to amend complaint is DENIED as moot. (D.I. 31)

Leonard P. Stark

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

34

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAUL E. WEBER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 18-637-LPS
	:	
AMY ARNOTT QUINLAN, et al.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 24th day of July, 2018, for the reasons set forth in the Court's July 11, 2018 memorandum and order denying Plaintiff's July 2, 2018 motion for reconsideration (*see* D.I. 27, 33, 34);

IT IS ORDERED that Plaintiff's supplemental motion for reconsideration is DENIED. (D.I. 37) Plaintiff is placed on notice that future similar motions will be docketed and not considered.

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

B5

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2559

PAUL E. WEBER,
Appellant

v.

AMY ARNOTT QUINLAN, Delaware State Court Administrator;
JOHN CARNEY, Governor; MATT DENN, Attorney General;
ANDREW J. VELLA, Deputy Attorney General; JAN R. JURDEN, President Judge,
Delaware Superior Court; HENLEY T. GRAVES, Sussex County Superior Court Judge;
WILLIAM C. CARPENTER, JR., New Castle County Superior Court Judge;
MARGARET ROSE-HENRY, Delaware Senate Majority Leader;
PETER SWARTZKOPF, Delaware House Speaker; JOHN DOE; JANE DOE;
MICHAEL LITTLE; TIMOTHY T. MARTIN

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1-18-cv-00637)
District Judge: Honorable Leonard P. Stark

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 12, 2019

Before: GREENAWAY, JR., RESTREPO and FUENTES, Circuit Judges

(Opinion filed: November 8, 2019)

C1

OPINION*

PER CURIAM

Delaware state prisoner Paul Weber appeals pro se from the District Court's orders dismissing his civil rights complaint and denying his related motion for reconsideration. For the reasons that follow, we will affirm those orders.

I.

In 2001, the Delaware Superior Court sentenced Weber to 30 days in prison following his conviction for second-degree forgery. He appealed from that conviction, but the Delaware Supreme Court ("the DSC") dismissed the appeal for lack of jurisdiction, explaining that, pursuant to Article IV, Section 11(1)(b) of the Delaware Constitution, a criminal defendant may appeal to the DSC only if his prison sentence exceeds one month and/or he was fined in an amount exceeding $100. See Weber v. State, No. 592, 2001, 2002 WL 31235418, at *1 (Del. Oct. 4, 2002) (per curiam). A few years later, the Superior Court convicted Weber of attempted first-degree robbery in another case. There, Weber's forgery conviction was deemed to be one of the predicate offenses that qualified him as a habitual offender under 11 Del. Code Ann. § 4214(a). As a result of that habitual-offender designation, Weber was sentenced to 25 years in prison for the attempted robbery conviction. On appeal from that judgment, Weber claimed that

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

C2

his forgery conviction should not have counted as a predicate offense because he had no right to appeal from that conviction. The DSC, sitting en banc, rejected that argument, noting that Weber had other means of challenging his forgery conviction. See Weber v. State, 971 A.2d 135, 159-60 (Del. 2009) (en banc). Specifically, the DSC stated that Weber could have petitioned for post-conviction relief under Superior Court Criminal Rule 35 or petitioned the DSC for a writ of certiorari. See id.

Years later, in April 2018, Weber filed the civil action that is now before us. His pro se complaint, brought pursuant to 42 U.S.C. § 1983, named the following defendants: the Governor of Delaware, Delaware's Attorney General and Deputy Attorney General, Delaware's Senate Majority Leader and Speaker of the House, Delaware's State Court Administrator, three Delaware state-court judges,[1] and John/Jane Doe defendants.[2] Weber alleged that, despite "submitt[ing] a blitzkrieg of motions, petitions, applications, requests, inquiries, complaints and appeals since 2002 in his Herculean quest to challenge his forgery conviction," (Compl. 9 n.2), his challenge to that conviction had not been heard in Delaware state court. He claimed that the defendants had violated his rights

[1] It appears that Weber was not suing these judges for any judicial decisions that they had made; rather, he was suing them for alleged acts or omissions relating to their work on certain committees (e.g., "the Criminal Justice Improvement Committee"). (See Compl. 2-3.)

[2] Weber later attempted to add two more defendants — prison officials Michael Little and Timothy Martin. The District Court determined that the claims against these additional defendants did not share common questions of law and fact with the claims against the original defendants. As a result, the District Court directed the District Court Clerk to treat the claims against the additional defendants as a separate civil action. Weber does not challenge that treatment in this appeal, and that separate action, which was assigned District Court docket number 1:18-cv-00867, is not before us here.

under the United States Constitution and the Delaware Constitution by failing to (1) "[p]rovide [him] with a meaningful remedy to challenge his forgery conviction," (2) "[r]espond to [his] requests and demands to implement or otherwise provide a meaningful remedy to challenge his forgery conviction," and (3) "[a]cknowledge [his] plight and/or the fact he had no meaningful remedy to challenge his forgery conviction." (Id. at 7.) In light of these alleged violations, Weber sought, inter alia, damages and an injunction ordering the defendants to immediately provide him with a mechanism for challenging his forgery conviction.

On June 12, 2018, the District Court entered an order dismissing Weber's complaint, without leave to amend, pursuant to 28 U.S.C. § 1915A(b)(1).[3] In support of that dismissal, the District Court concluded that Weber's claims were untimely and barred by Heck v. Humphrey, 512 U.S. 477 (1994).[4] Weber timely moved for reconsideration of that decision, but the District Court denied that motion on July 11, 2018. This timely appeal followed.

---

[3] Under § 1915A, a district court may dismiss "a complaint in a civil action in which a prisoner seeks redress from a governmental entity or office or employee of a governmental entity" if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a), (b)(1).

[4] In Heck, "the Supreme Court held that where success in a § 1983 action would implicitly call into question the validity of conviction or duration of sentence, the plaintiff must first achieve favorable termination of his available state or federal habeas remedies to challenge the underlying conviction or sentence." Williams v. Consovoy, 453 F.3d 173, 177 (3d Cir. 2006).

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. Our review of the District Court's dismissal of Weber's complaint is plenary. See Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999). We review the District Court's denial of Weber's motion to reconsider for abuse of discretion, exercising de novo review over that court's legal conclusions and reviewing its factual findings for clear error. See Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 246 (3d Cir. 2010). We may affirm the District Court's decisions on any basis supported by the record. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

The parties' briefing argues at length about whether Weber's complaint is time-barred. But we need not decide that issue (or rule on whether the District Court correctly relied on Heck) to decide this appeal.[5] As explained below, even if Weber's complaint is timely and not barred by Heck, it was still subject to dismissal under § 1915A(b)(1).

Weber's complaint revolves around his contention that he has not had *any* means of challenging his forgery conviction in state court. Although the DSC, sitting en banc, concluded in 2009 that Weber had two such vehicles at his disposal for bringing that challenge (a petition under Superior Court Criminal Rule 35 and a petition to the DSC for a writ of certiorari), Weber maintains that these were "faux remedies." (Weber's Opening Br. 11 (emphasis omitted).) He claims that, after receiving the DSC's decision

[5] Because we do not reach the timeliness question, we deny Weber's motion received on September 23, 2019, which effectively asks us to consider whether his complaint was timely filed in light of the Supreme Court's recent decision in McDonough v. Smith, 139 S. Ct. 2149 (2019).

in 2009, he attempted to invoke those two (and other) state-court vehicles to challenge his forgery conviction, but the state courts ultimately refused to allow him to assert that challenge.

It is not our place to decide whether Weber truly had a viable means of challenging his forgery conviction in state court. See Sameric Corp. of Del., Inc. v. City of Philadelphia, 142 F.3d 582, 592-93 (3d Cir. 1998) ("It is axiomatic that the highest court of a state is the final arbiter of that state's law."). To the extent that the Superior Court concluded, in one or more post-2009 rulings, that Weber could *not* challenge his forgery conviction under Rule 35 or via a petition to the DSC for a writ of certiorari, Weber's recourse was to appeal those rulings to the DSC. Weber has not pointed us to any DSC decision that resolved such an appeal.[6] But even if (1) there were such a decision from the DSC, and (2) that decision contradicted the DSC's 2009 decision by holding that Weber could never have used either of those two vehicles (or any other vehicle) to challenge his forgery conviction, there still would be no basis for relief here. Weber has not cited, and we have not located, any authority supporting the proposition that a defendant who has no means of challenging his conviction in state court may assert a claim for relief under the United States Constitution in a § 1983 action against one or more individuals.[7]

---

[6] In a May 2018 decision denying Weber's petition for a writ of mandamus, the DSC indicated that he had not filed an appeal from the Superior Court's April 2016 order rejecting his attempt to invoke Rule 35. See In re Weber, No. 169, 2018, 2018 WL 2446803, at *1 (Del. May 30, 2018).

[7] The absence of such authority is not surprising. See, e.g., Jutrowski v. Twp. of Riverdale, 904 F.3d 280, 289 (3d Cir. 2018) ("[A] defendant's § 1983 liability must be

In short, we see no reason to disturb the District Court's decision dismissing, without leave to amend, Weber's claims alleging violations of the United States Constitution. And since those claims were subject to dismissal, his claims for relief under the Delaware Constitution were subject to dismissal, too. See Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) ("This Court has recognized that, where the claim[s] over which the district court has original jurisdiction [are] 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.") (internal quotation marks omitted). Lastly, we find no error in the District Court's denial of Weber's motion to reconsider. See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (explaining that a litigant seeking reconsideration must show that (1) there has been "an intervening change in controlling law," (2) new evidence is available, and/or (3) there is a "need to correct a clear error of law or fact or to prevent manifest injustice").

---

predicated on his direct and personal involvement in the alleged violation . . . ."); see also Abney v. United States, 431 U.S. 651, 656 (1977) ("[I]t is well settled that there is no constitutional right to an appeal."); Pennsylvania v. Finley, 481 U.S. 551, 557 (1987) (noting that "States have no obligation to provide [post-conviction] relief").

In light of the above, we will affirm the District Court's June 12, 2018 and July 11, 2018 orders.[8] Weber's "Motion for Sanctions," which asks us to strike the defendants'/appellees' brief, is denied.

[8] Weber, purporting to rely on Federal Rule of Appellate Procedure 10(e)(2), moves to expand the record to include the DSC's July 2019 decision affirming the Superior Court's denial of his "Motion for Relief of Judgment." See Weber v. State, No. 486, 2018, 2019 WL 3268813, at *2-3 (Del. July 19, 2019). We hereby deny these motions as presented, for Rule 10(e)(2) is inapplicable here. See In re Application of Adan, 437 F.3d 381, 388 n.3 (3d Cir. 2006) ("Rule 10(e)(2) allows amendment of the record on appeal only to correct inadvertent omissions, not to introduce new evidence."). That said, we have the authority "to take judicial notice of new developments not considered by the lower court." In re Am. Biomaterials Corp., 954 F.2d 919, 922 (3d Cir. 1992) (quoting United States v. Lowell, 649 F.2d 950, 966 n.26 (3d Cir. 1981)). But even if we were to exercise that authority here, the outcome of this appeal would be the same, as nothing in this new DSC decision undercuts our analysis.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2559

PAUL E. WEBER,
Appellant

v.

AMY ARNOTT QUINLAN, Delaware State Court Administrator; JOHN CARNEY, Governor; MATT DENN, Attorney General; ANDREW J. VELLA, Deputy Attorney General; JAN R. JURDEN, President Judge, Delaware Superior Court; HENLEY T. GRAVES, Sussex County Superior Court Judge; WILLIAM C. CARPENTER, JR., New Castle County Superior Court Judge; MARGARET ROSE-HENRY, Delaware Senate Majority Leader; PETER SWARTZKOPF, Delaware House Speaker; JOHN DOE; JANE DOE; MICHAEL LITTLE; TIMOTHY T. MARTIN

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1-18-cv-00637)
District Judge: Honorable Leonard P. Stark

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 12, 2019

Before: GREENAWAY, JR., RESTREPO and FUENTES, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit LAR 34.1(a) on March 12, 2019. On consideration whereof, it is now hereby

D1

ORDERED and ADJUDGED by this Court that the orders of the District Court entered June 12, 2018, and July 11, 2018, are hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 8, 2019

D2

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **18-2559**

PAUL E. WEBER,
Appellant

v.

AMY ARNOTT QUINLAN, Delaware State Court Administrator; JOHN CARNEY, Governor; MATT DENN, Attorney General; ANDREW J. VELLA, Deputy Attorney General; JAN R. JURDEN, President Judge, Delaware Superior Court; HENLEY T. GRAVES, Sussex County Superior Court Judge; WILLIAM C. CARPENTER, JR., New Castle County Superior Court Judge; MARGARET ROSE HENRY, Delaware Senate Majority Leader; PETER SWARTZKOPF,
Delaware House Speaker; JOHN DOE; JANE DOE; MICHAEL LITTLE; TIMOTHY T. MARTIN

D.C. No. 1-18-cv-00637

SUR PETITION FOR REHEARING

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

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

---

* Judge Fuentes' vote is limited to panel rehearing only.

D3

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/ L. Felipe Restrepo
Circuit Judge

Dated: October 13, 2020
Lmr/cc: Paul E. Weber
Carla A. Jarosz
Victoria R. Sweeney

D4