

9
Appx 1

ALD-023

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2414

ANTHONY V. CAIBY,
Appellant

v.

TAMMY FERGUSON

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00423)
District Judge: Honorable Wendy Beetlestone

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: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern 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

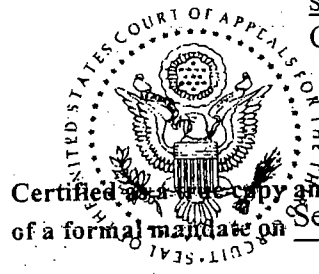
ORDERED and ADJUDGED by this Court that the judgment of the District Court entered May 30, 2019, be and the same hereby is affirmed.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: December 24, 2019



Certified as a true copy and issued in lieu
of a formal mandate on September 24, 2020

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

Appx 2

ALD-023

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2414

ANTHONY V. CAIBY,
Appellant

v.

TAMMY FERGUSON

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00423)
District Judge: Honorable Wendy Beetlestone

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: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

(Opinion filed: December 24, 2019)

OPINION*

PER CURIAM

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

Appellant Anthony Caiby, proceeding pro se and in forma pauperis ("IFP"), appeals from the District Court's order dismissing his civil action filed under 42 U.S.C. § 1983 as factually frivolous and for failure to state a claim. Because the appeal presents no substantial question, we will summarily affirm the judgment of the District Court.

Caiby, a Pennsylvania prisoner, sought to file an IFP complaint against Department of Corrections ("DOC") Superintendent Tammy Ferguson and unidentified DOC employee-defendants for alleged civil rights violations. The District Court permitted Caiby to proceed IFP but dismissed his complaint with leave to amend. In his amended complaint, Caiby alleged that he was the victim of a clandestine program to inflict mental and physical torture called the "Mind Initiative," implemented by unconstitutional DOC policies and customs. See Am. Comp., ECF No. 16 at 12 (¶ 6) and 14 (¶ 15). Caiby described being "slashed continuously," id. at 4 (§ IV(B)), "cut to the 'burn sensors' third cuticle down," id., "lasered down to the cellular wall," id. at 12 (¶ 4), and implanted with "renal/neural impulse control," id. at 15 (¶ 24). Caiby claimed that DOC officials abducted him and otherwise retaliated against him for divulging the details of the alleged program. See id. at 15 (¶ 22) and 24 (¶ 83). Additionally, Caiby asserted that he was assaulted numerous times by multiple cellmates. Id. at 13 (¶ 10).

The District Court screened Caiby's amended complaint and dismissed it with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). In particular, the Court found that many of Caiby's claims were factually frivolous because they were not based in reality. The District Court further ruled that Caiby otherwise failed to state a § 1983

claim because he did not adequately allege that the defendants were personally involved in the purported wrongdoing. Caiby timely appealed.¹

We have jurisdiction pursuant to 28 U.S.C. § 1291, and exercise plenary review over the District Court's dismissal of Caiby's amended complaint. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000); Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990). We construe his pro se complaint liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), and may affirm the District Court's order if the appeal does not present a substantial question. See 3d Cir. LAR 27.4 and I.O.P. 10.6.

We agree with the District Court that most of Caiby's claims appear to be "irrational" or "wholly incredible" statements, and thus are frivolous within the meaning of § 1915(e)(2)(B)(i). See Denton v. Hernandez, 504 U.S. 25, 33 (1992). A claim is considered factually frivolous where "the facts alleged are 'clearly baseless,' . . . a category encompassing allegations that are 'fanciful,' . . . 'fantastic,' . . . and 'delusional.'" Id. at 32-33 (quoting Neitzke v. Williams, 490 U.S. 319, 327-28 (1989)). For example, Caiby's complaint includes numerous references to concepts like telepathic commands and mind control.

To the extent Caiby's allegations about having been cut by his cellmates can be understood to assert a claim that the defendants failed to protect him from being assaulted by other inmates, he failed to state a claim. See Bistran v. Levi, 696 F.3d 352, 367 (3d

¹ Caiby has filed a motion for appointment of counsel, as well as documents in which he complains that he has been retaliated against for litigating the claims underlying this case.

Cir. 2012) (holding that a plaintiff must show that (1) he was “incarcerated under conditions posing a substantial risk of serious harm”; (2) prison officials acted with “deliberate indifference” to his safety; and (3) the prison officials’ “deliberate indifference caused him harm”).

We likewise agree with the District Court that Caiby failed to state that the defendants were personally responsible for the alleged constitutional violations against him, which is required to maintain a successful civil rights action under § 1983. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3rd Cir. 1988). For instance, Caiby did not specify what Superintendent Ferguson did or did not do to give rise to a claim against her; he named her as a defendant because “she has the power as the head administrative [sic] to grant discovery.” Am. Comp., ECF No. 16 at 14 (¶ 15). While Caiby’s complaint referenced a DOC policy that “promulgated and enforced” the alleged civil rights violations against him, he failed to actually identify the policy or connect it to Ferguson’s actions. Id. at 6 (§ VII(C)). Nor did Caiby make any more specific allegations regarding any Jane or John Doe defendants.

Finally, given that Caiby was granted leave to amend his initial complaint, and that he failed to correct any of the complaint’s deficiencies in his amended complaint, the District Court did not err when it declined to grant Caiby further leave to amend. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002) (explaining that leave to amend need not be granted if amendment would be futile).

As this appeal presents no substantial question, we will affirm the District Court's order of dismissal. See 3d LAR 27.4 and I.O.P. 10.6. Caiby's motion for appointment of counsel is denied. See Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993). Also, to the extent that he presents any requests for relief in the other documents he filed, those requests are denied.

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App 3

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2414

ANTHONY V. CAIBY,
Appellant

v.

TAMMY FERGUSON

(D.C. Civ. No. 0313-2:2-19-cv-00423)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, 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

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/ Theodore McKee
Circuit Judge

Date: September 16, 2020
Lmr/cc: Anthony V. Caiby

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Appx 4

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

ANTHONY VONE CAIBY,
Plaintiff,

v.

TAMELA FERGUSON,
Defendant.

FILED

MAY - 2 2019

CIVIL ACTION NO. 19-CV-0423

By KATE BARKMAN, Clerk
Dep. Clerk

ORDER

AND NOW, this 21 day of May, 2019, upon consideration of Plaintiff Anthony Vone Caiby's Motion to Proceed *In Forma Pauperis* (ECF No. 12), his Statement (ECF No. 13), and his *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed in forma pauperis is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Anthony Vone Caiby, #HX-8170, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court hereby directs the Warden of SCI Phoenix or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Caiby's inmate account; or (b) the average monthly balance in Caiby's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Caiby's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Caiby's inmate account until the fees are paid. Each payment shall reference the docket number for this case.

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3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of SCI Phoenix.

4. The Complaint is **DEEMED** filed.

5. Caiby's Complaint is **DISMISSED** for the reasons in the Court's Memorandum. Caiby's claims that are factually frivolous are **DISMISSED with prejudice**. Caiby's claims that are dismissed for failure to state a claim are **DISMISSED without prejudice** to amendment in accordance with paragraph six (6) of this Order.

6. Caiby is given thirty (30) days to file an amended complaint. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the second amended complaint, and shall state the basis for Caiby's claims against each defendant. If Caiby does not know the identity of the individuals responsible for violating his rights, he may refer to them as Jane or John Does; however, Caiby must still describe how these individuals violated his rights.¹ Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

7. The Clerk of Court shall send Caiby a blank copy of the Court's form complaint to be used by a prisoner filing a civil rights action bearing the above civil action number. Caiby may use this form to file his amended complaint if he chooses to do so.

8. If Caiby fails to comply with this Order, his case may be dismissed for failure to prosecute without further notice.

BY THE COURT:



WENDY BEETLESTONE, J.

¹ Without the name of at least one individual or entity, however, the Court will be unable to direct service of any second amended complaint that Caiby may file.

JD

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App B

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

ANTHONY VONE CAIBY,
Plaintiff,

v.

TAMELA FERGUSON,
Defendant.

FILED CIVIL ACTION NO. 19-CV-0423

MAY - 2 2019

KATE BARKMAN, Clerk
By _____ Dep. Clerk

MEMORANDUM

BEETLESTONE, J.

MAY 2ND, 2019

Plaintiff Anthony Vone Caiby, a prisoner incarcerated at SCI Phoenix who is representing himself, filed this civil action pursuant to 42 U.S.C. § 1983 against Tamela Ferguson, the Superintendent of SCI Phoenix, based on the conditions at SCI Graterford and SCI Phoenix. He seeks leave to proceed *in forma pauperis*. The Court will grant Caiby leave to proceed *in forma pauperis* and dismiss his Complaint with leave to file an amended complaint.

I. FACTS

The factual basis for Caiby's claims is not entirely clear. He alleges that:

In February 14-28, 2018 and then the whole time incommunicado inimitation [sic] phone calls, nonpayment for mind-initiative, retaliation, being placed under renal neural impulse control, and continuously cut with razors, burn sensor third cuticle down etc. to make me capitulate and stop fighting.

(Compl. at 6.)¹ He adds that he "was cut by multiple cell mates [his] mail/legal mail, sent to the POV [or POC], and kidnapped, not compensated." (*Id.* at 7.) Caiby describes the most serious "cut" as having occurred on September 29, 2017, "on the hand, right hand, under the left eye, also cut on the burn sensor third cuticle down multiple times." (*Id.*) Caiby also claims to have

¹ The Court adopts the pagination assigned to the Complaint by the CM-ECF docketing system.

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been “kidnapped from SCI Graterford, on Feb 16, 2018, kept in POC, [and] lasered to the cellular wall.” (*Id.*) He alleges that he has “new scars from last scans 54 new cuts in total, covered up by officials in charge.” (*Id.*)

Caiby claims to have suffered physical injuries and to have been “shocked via voice command technology.” (*Id.*) He seeks unspecified injunctive relief and \$5 million in damages. Caiby attached to his Complaint a letter addressed to the state court inquiring about his post-conviction proceedings. The letter states that he is “still under renal/neural impulse control,” which has impacted his ability to pursue his case, and that he has been assaulted during his incarceration. (*Id.* at 14.) Caiby also attached pictures to his Complaint; it is not clear how those pictures are relevant to his claims.

II. STANDARD OF REVIEW

The Court will grant Caiby leave to proceed *in forma pauperis* because he has represented that he lacks the ability to pay the fees to commence this civil action.² Accordingly, Caiby’s Complaint is subject to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii), which requires the Court to dismiss the Complaint if it is frivolous or fails to state a claim. A complaint is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). It is legally baseless if “based on an indisputably meritless legal theory,” *Deutsch v. United States*, 67 F.3d 1080, 1085 (3d Cir. 1995), and factually baseless “when the facts alleged rise to the level of the irrational or the wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

² However, as Caiby is incarcerated, he must pay the filing fee in installments in accordance with the Prison Litigation Reform Act. See 28 U.S.C. § 1915(b). The Court will accept Caiby’s submissions as substantial compliance with § 1915(a) given the documentation he provided reflecting that he has had difficulty obtaining his account statement.

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To survive dismissal, the complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). "[M]ere conclusory statements[] do not suffice." *Id.* As Caiby is proceeding *pro se*, the Court construes his allegations liberally. *Higgs v. Att'y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

III. DISCUSSION

Initially, several of Caiby's allegations rise to the level of factually frivolous. At points in his pleading, he suggests that he is under "renal/neural impulse control" or otherwise being controlled by "voice command technology." He also alludes to a "mind-initiative." These allegations rise to the level of factually frivolous and cannot support a claim on which Caiby can proceed.³

To the extent Caiby's allegations are not factually frivolous, he has not pled a plausible basis for a claim. "To state a claim under § 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). "A defendant in a civil rights action must have personal involvement in the alleged wrongs." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). "Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676.

³ Caiby's allegation in a statement provided to the Court that "[t]hey are also on my head to use military paralane, this falls under the 'Military Secrets Doctrine' jamming me to the point that I cannot read, concentrate etc" reinforces this interpretation. (ECF No. 13 at 1.)

There are “two general ways in which a supervisor-defendant may be liable for unconstitutional acts undertaken by subordinates.” *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307, 316 (3d Cir. 2014), *reversed on other grounds by Taylor v. Barkes*, 135 S. Ct. 2042 (2015). First, a supervisor may be liable if he or she ““with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused [the] constitutional harm.” *Id.* (quoting *A.M. ex rel. J.M.K. v. Luzerne Cty. Juvenile Det. Ctr.*, 372 F.3d 572, 586 (3d Cir. 2004) (alteration in original)). “Second, a supervisor may be personally liable under § 1983 if he or she participated in violating the plaintiff’s rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in the subordinate’s unconstitutional conduct.” *Id.* “[T]he level of intent necessary to establish supervisory liability will vary with the underlying constitutional tort alleged.” *Id.* at 319.

Here, it is possible that Caiby could allege a nonfrivolous basis for a claim based on repeated assaults from other inmates and circumstances related to his mail, but the Complaint does not allege a plausible claim as pled due to the absence of enough facts showing an entitlement to relief. Caiby also has not alleged any plausible basis for concluding that Ferguson violated his rights in connection with the conditions of his confinement. While it would be appropriate for Caiby to identify defendants as “John Doe” or “Jane Doe” if he does not know their names, he is still obligated to describe those individuals with some particularity and explain how each individual he seeks to proceed against was personally involved in the violation of his constitutional rights, whether due to the official’s own misconduct or the official’s deliberate indifference to known deficiencies in a policy or procedure that violated his rights. In sum, Caiby has not pled a plausible basis for a constitutional violation or a plausible basis for

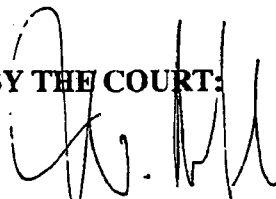
Ferguson's involvement in any of the events that appear to form the basis for his challenges to his conditions of confinement.

IV. CONCLUSION

For the foregoing reasons, Caiby's Complaint is dismissed as factually frivolous and for failure to state a claim. However, as it is possible that Caiby could allege a plausible basis for a claim challenging the conditions of his confinement, he will be given an opportunity to file an amended complaint. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

An appropriate Order follows.

BY THE COURT:



WENDY BEETLESTONE, J.

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APPX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-2414

Caiby v. Ferguson

To: Clerk

- 1) Motion by Appellant for Extension of Time to File Petition for Rehearing

No action will be taken on the foregoing motion as it is deemed unnecessary. Appellant's petition for rehearing was due to be filed on or before January 7, 2020. It appears that Appellant's petition was mailed by prison officials on or before January 6, 2020, and the petition was received by the Clerk on January 10, 2020. Appellant's petition is, therefore, considered timely.

Upon review of the petition for rehearing, however, it appears to be noncompliant. Pursuant to 3rd Cir. L.A.R. 35.2(a), any additional documents attached to the petition must be accompanied by a motion for leave to file the exhibits attached to the petition for rehearing. Within fourteen (14) days of the date of this Order, Appellant must file a motion for leave to file the exhibits attached to the petition for rehearing. No action will be taken on the petition until these deficiencies are corrected.

Can also have letter

For the Court,

letter explaining the petition

s/ Patricia S. Dodszuweit
Clerk

Dated: January 14, 2020
PDB/cc: Anthony V. Caiby

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APR 12

ALD-023

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2414

ANTHONY V. CAIBY,
Appellant

v.

TAMMY FERGUSON

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00423)
District Judge: Honorable Wendy Beetlestone

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: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern 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 30, 2019, be and the same hereby is affirmed.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit
Clerk

DATED: December 24, 2019

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Appx 16

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

ANTHONY VONE CAIBY,
Plaintiff,

v.

TAMELA FERGUSON,
Defendant.

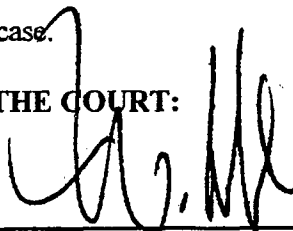
CIVIL ACTION NO. 19-CV-0423

ORDER

AND NOW, this 29th day of May, 2019, upon consideration of Plaintiff Anthony Vone Caiby's Amended Complaint (ECF No. 16), it is **ORDERED** that:

1. The Amended Complaint is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) for the reasons stated in the Court's Memorandum.
2. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:



WENDY BEETLESTONE, J.

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

ANTHONY VONE CAIBY,

Plaintiff,

v.

TAMELA FERGUSON,

Defendant.

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CIVIL ACTION NO. 19-CV-0423

MEMORANDUM

BEETLESTONE, J.

MAY 29, 2019

Plaintiff Anthony Vone Caiby, a prisoner incarcerated at SCI Phoenix who is representing himself, filed this civil action pursuant to 42 U.S.C. § 1983 against Tammy Ferguson, the Superintendent of SCI Phoenix, based on the conditions at SCI Graterford and SCI Phoenix. His Amended Complaint is currently before the Court. For the following reasons, the Court will dismiss Caiby's Amended Complaint with prejudice as frivolous and for failure to state a claim.

I. FACTS AND PROCEDURAL HISTORY

In his initial Complaint, Caiby alleged that:

In February 14-28, 2018 and then the whole time incommunicado inimitation [sic] phone calls, nonpayment for mind-initiative, retaliation, being placed under renal neural impulse control, and continuously cut with razors, burn sensor third cuticle down etc. to make me capitulate and stop fighting.

(Compl. at 6.)¹ He added that he "was cut by multiple cell mates [his] mail/legal mail, sent to the POV [or POC], and kidnapped, not compensated." (*Id.* at 7.) Caiby described the most serious "cut" as having occurred on September 29, 2017, "on the hand, right hand, under the left eye,

¹ The Court adopts the pagination assigned to Caiby's pleadings by the CM-ECF docketing system.

any John Doe Defendants if he sought to do so. Caiby was given leave to file an amended complaint, which he did.² (See ECF Nos. 15 & 16.)

Caiby names Tammy Ferguson as a Defendant in the caption of his Amended Complaint and also lists a Jane/John Doe Defendant on the second page of his Amended Complaint. Caiby again alleges that he was “slashed continuously, and cut to the ‘burn censors’ third cuticle down by agents of the state solicited by people acting under color of state law.” (Am. Compl. at 4.) Caiby alleges that his injuries stemmed from an “unconstitutional policy/custom,” but he does not clearly explain the specific policy or custom in question. (*Id.* at 5.) Caiby alleges that when he returned to SCI Phoenix from Monroe County on January 27, 2019, he told a Lieutenant that he was “slashed a bunch of times,” at which point he was taken to administrative segregation for ten days, after which he saw the Program Review Committee. (*Id.* at 12.)

Caiby indicates that he told prison officials to call the state police to report what had happened to him. It appears he was sent to a psychiatric observation cell and released two days later after being assessed “by a psych panel whom I also told I was cut.” (*Id.*) Caiby alleges he does not “know the identity of the assailants who solicited the hits/slashings most of the with dull point instruments burn censor third cuticle down. This is a secret kind of torture usen [sic] by the military, so it falls under the ‘Military Secrets Doctrine.’” (*Id.* at 12-13.) He also suggests that information—apparently about his injuries—was “gleaned by the unknown conspirators after an investigation into [his] past by Det. William Irish NYPD PSA2 June 4, 1992 Brookdale Hospital.” (*Id.* at 13.) It appears Caiby sought treatment for his injuries but that at sick call he

² Caiby filed two copies of his Complaint prior to the Court’s first screening, which were in essence identical, and which the Court essentially treated as one Complaint. (See ECF Nos. 2 & 7.) Accordingly, the Court will treat the pleading before it as an Amended Complaint rather than a second amended complaint.

proceeding *pro se*, the Court construes his allegations liberally. *Higgs v. Att'y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

Moreover, Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to contain "a short a plain statement of the claim showing that the pleader is entitled to relief." A district court may *sua sponte* dismiss a complaint that does not comply with Rule 8 if "the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995) (quotations omitted). This Court has noted that Rule 8 "requires that pleadings provide enough information to put a defendant on sufficient notice to prepare their defense and also ensure that the Court is sufficiently informed to determine the issue." *Fabian v. St. Mary's Med. Ctr.*, No. Civ. A. 16-4741, 2017 WL 3494219, at *3 (E.D. Pa. Aug. 11, 2017) (quotations omitted).

III. DISCUSSION

Caiby's Amended Complaint contains the same defects as his initial Complaint. Many of his allegations rise to the level of factually frivolous. His allegations that he is under "renal/neural impulse control," subject to a "mind-initiative," and being tortured in connection with a secret military program do not appear to be grounded in reality. These allegations, which comprise the majority of Caiby's Amended Complaint, rise to the level of factually frivolous and cannot support a claim on which Caiby can proceed.

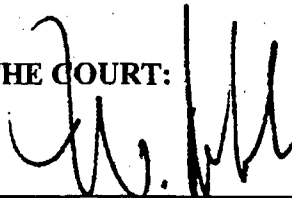
To the extent Caiby's allegations are not factually frivolous, he has not pled a plausible basis for a claim. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). "A defendant in a civil rights action must have personal involvement in the

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IV. CONCLUSION

For the foregoing reasons, Caiby's Amended Complaint is dismissed as factually frivolous and for failure to state a claim. Caiby was previously notified of the defects in his claims and provided an opportunity to amend but was unable to do so. As the Amended Complaint contains the same defects as the initial Complaint, the Court concludes that further attempts at amendment would be futile and will dismiss this case with prejudice. An appropriate Order follows.

BY THE COURT:



WENDY BEETLESTONE, J.

IN THE UNITED STATES SUPREME COURT

CERTIFICATE OF COMPLIANCE

No. 07-

ANTHONY VONE CAIBY

V.

TAMMY FERGUSON ET AL.;

As required by the Supreme Court Rule 33.1(h) I certify that the petition

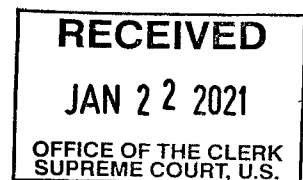
for a writ of certiorari contains _____ words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1 (d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan 14, 2020

Anthony Vone Caiby

eyes messed up due to attack of 11/25/16
but it's in accordance



IN THE UNITED STATES SUPREME COURT

Anthony Vone Caiby

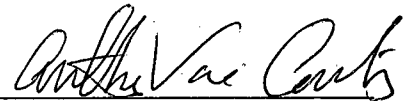
Case No. 19-2414

V.

Tammy Ferguson

I, am an Inmate confined in an institution. Today, Jan 14th 2020, I am depositing this document a Writ of Certorari in this case in this institutions mail box. First class postage being pre paid. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge information and belief. Under the penalties provided for by **28 U.S.C. 1746 18 U.S.C. 1621**

Dated: Jan 14, 2020



Anthony Vone Caiby
Pro Se

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APPX 1

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-2876

Caiby v. Link

To: Clerk

- 1) Motion by Appellant for Appointment of Counsel

No action will be taken on the foregoing submission as the above-docketed appeal was closed by the Court's Order dated July 9, 2019. A copy of the Court's Order is enclosed.

It is noted that the time to file a petition for rehearing has passed and the mandate issued on July 31, 2019. No further submissions will be considered in this case.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: December 5, 2019
Tmm/cc: Anthony V. Caiby

**Additional material
from this filing is
available in the
Clerk's Office.**