

Appx.

A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-1077 & 20-1758

AARON J. BRESSI,
Appellant

v.

TRACY MCCLOUD; BRITTANY DUKE; RONALD MCCLAY; MATTHEW
NARCAVAGE; DANIEL SHOOP; JILL HENRICH; TERRY KECHEM;
PATROLMAN ADAMS; CHRISTOPHER LAPOTSKY; JOHN GEMBIC; OFFICE
CLERKS, Shamokin District Magistrate; BENJAMIN ALPHELBALM; OFFICE
CLERKS, Sunbury District Magistrate; MICHAEL P. TOOMEY; MICHAEL SEWARD;
DEGG STARK; JILL FRY; CHARLES SAYLOR; PAIGE ROSINI; WARDEN
SNYDER COUNTY PRISON; OFFICE CLERKS, Snyder County Prison; EDWARD
GRECO; MICHAEL SUIDERS; JAMES BEST; VINCENT V. ROVITO; RACHAEL
GLASSO; AMY STOAK; KIMBERLY BICKERT; CATHY DUZICK; MICHAEL
FANTAGROSSE; JENNIFER FANTAGROSSE; RICHARD STIENHEART; GINGER
STIENHEART; JEFFREY LEACH; DENISE CARNUCCIO; JEFFREY LONG;
TYLER MUMMY; KIMBERLY SEDDON; CHASTITY SEDDON; WARDEN BRUCE
KOVACH; DEPUTY WARDEN JAMES SMINK;
COUNSELOR SAMUEL KRANZEL

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4:18-cv-01345)
District Judge: Honorable Matthew W. Brann

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 26, 2021

Before: CHAGARES, PHIPPS and COWEN, Circuit Judges

(Opinion filed: November 1, 2021)

OPINION*

PER CURIAM

In this civil rights action, pro se appellant Aaron Bressi, proceeding in forma pauperis, named over 40 defendants, including prosecutors, public defenders, judges, court staff, prison staff, and private citizens, and brought a wide variety of claims under 42 U.S.C. § 1983, as well as state-law claims. Most of the claims were related to his 2016 arrest and subsequent convictions on counts of, inter alia, aggravated assault, making terroristic threats, stalking, and reckless endangerment. He was sentenced to four to eight years in prison, the judgment of conviction was affirmed on direct appeal, and the Pennsylvania Supreme Court denied review.

After Bressi filed an amended complaint, the Magistrate Judge recommended dismissing all of the claims with prejudice, except for Bressi's retaliation claim. The Magistrate Judge recommended dismissing many of the claims as barred by the favorable termination rule established in Heck v. Humphrey, 512 U.S. 477 (1994). The District Court adopted the Magistrate Judge's report and recommendation and dismissed all of the

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

claims, while affording Bressi leave to file a second amended complaint correcting the deficiencies in his retaliation claim. Bressi's appeal of that order gave rise to C.A. No. 20-1077. When Bressi failed to file a second amended complaint, the District Court adopted the Magistrate Judge's recommendation that this claim also be dismissed with prejudice. Bressi's appeal of that order gave rise to C.A. No. 20-1758. The two appeals were consolidated for briefing and disposition. We have jurisdiction under 28 U.S.C. § 1291.¹

In his brief, Bressi argues that the District Court erred by: (1) not serving the defendants; (2) "not amending [his] amended complaint, pursuant to the way and why [he] stated in his motion to amend complaint, when amended complaint was filed"; (3) not enforcing subpoenas he wanted to serve against some of the defendants; (4) dismissing his claims for failure to state a claim; and (5) not affording him the opportunity to amend his claims (other than the retaliation claim) before dismissing them.

To begin, the District Court did not err by not serving the defendants. The District Court dismissed the case after screening Bressi's claims pursuant to 28 U.S.C. § 1915A(a) and 28 U.S.C. § 1915(e)(2)(B) and determining that he had failed to state a

¹ Bressi initially appealed from the order dismissing all but his retaliation claim. That order was not immediately appealable, *see Mellon Bank, N.A. v. Metro Commc'ns, Inc.*, 945 F.2d 635, 640 (3d Cir. 1991), but it ripened into a final order when Bressi failed to amend his retaliation claim and the District Court dismissed the case. *See ADAPT of Phila. v. Phila. Hous. Auth.*, 433 F.3d 353, 361-62 (3d Cir. 2006) (citing *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 184-85 (3d Cir. 1983)). We note that because that first order that was challenged was not immediately appealable, the District Court retained jurisdiction over the matter. *See Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985).

claim. These statutes authorize pre-service screening of complaints by litigants proceeding in forma pauperis. See Grayson v. Mayview State Hosp., 293 F.3d 103, 111 n.15 (3d Cir. 2002). Similarly, the District Court did not err by not enforcing subpoenas that Bressi wanted to serve against some of the defendants.

With regard to Bressi's argument that the District Court erred in the manner in which it docketed his amended complaint, it is unclear what Bressi is actually arguing. He refers us to his motion for leave to amend his complaint, in which he appeared to explain how and why he was amending his complaint, and he included as an attachment his proposed amended complaint. The District Court denied the motion as moot, concluding that Bressi could amend his complaint as a matter of course, and then docketed the amended complaint. The District Court did not abuse its discretion in doing so. See Grayson, 293 F.3d at 108 (noting that "the grant or denial of an opportunity to amend is within the discretion of the District Court") (internal quotation marks omitted). There is no requirement that a court read additional information from a plaintiff's motion to amend into his proposed amended complaint as Bressi appears to argue the District Court should have done here.

We further hold that Bressi has, for the most part, forfeited his challenge to the District Court's ruling. M.S. by & through Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (holding that claims were forfeited where appellant failed to raise them in her opening brief). While Bressi generally stated that the District Court erred in toto by dismissing his complaint, he offered no argument as to why or how the District Court erred in adjudicating any of his approximately 40 claims. See Geness

v. Cox, 902 F.3d 344, 355 (3d Cir. 2018) (“[I]t is well settled that a passing reference to an issue will not suffice to bring that issue before this court.”) (citation and internal quotation marks omitted). Similarly, Bressi’s conclusory assertion that the District Court erred by not affording him the opportunity to amend his claims lacked any supporting authority or suggestion about what his meritorious amendments would have been.

To the extent that we can understand Bressi to raise a specific challenge, he appears to focus on his retaliation claim. Considering that claim, we hold that the District Court did not err in dismissing it. To state a claim for retaliation, Bressi needed to allege that “(1) his conduct was constitutionally protected; (2) he suffered an adverse action at the hands of prison officials; and (3) his constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him.” Watson v. Rozum, 834 F.3d 417, 422 (3d Cir. 2016). As the Magistrate Judge thoroughly explained, although Bressi presented allegations sufficient to satisfy each element of a retaliation claim at the pleading stage, he failed to plausibly allege the personal involvement of any of the defendants against whom he brought these claims. See Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988); cf. Jutrowski v. Twp. of Riverdale, 904 F.3d 280, 289-92 (3d Cir. 2018). As noted, Bressi was given leave to remedy this deficiency in an amended complaint, but he failed to file an amended claim. See Grayson, 293 F.3d at 108. For these reasons, the District Court did not err in dismissing Bressi’s retaliation claim. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000) (noting that our standard of review for a dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii) is plenary). For these reasons, we will affirm the judgment of the District Court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-1077 & 20-1758

AARON J. BRESSI,
Appellant

v.

TRACY MCCLOUD; BRITTANY DUKE; RONALD MCCLAY; MATTHEW
NARCAVAGE; DANIEL SHOOP; JILL HENRICH; TERRY KECHEM;
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TYLER MUMMY; KIMBERLY SEDDON; CHASTITY SEDDON; WARDEN BRUCE
KOVACH; DEPUTY WARDEN JAMES SMINK;
COUNSELOR SAMUEL KRANZEL

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4:18-cv-01345)
District Judge: Honorable Matthew W. Brann

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 26, 2021

Before: CHAGARES, PHIPPS and COWEN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on January 26, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 20, 2020, be and the same is hereby affirmed. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 1, 2021

APPX.

B

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

AARON J. BRESSI,

Plaintiff,

v.

TRACY MCCLOUD, et al.,

Defendants.

No. 4:18-CV-01345

(Judge Brann)

(Magistrate Judge Saporito)

ORDER

DECEMBER 30, 2019

Aaron J. Bressi filed this amended 42 U.S.C. § 1983 complaint alleging that numerous individuals violated his civil rights.¹ On August 9, 2019, Magistrate Judge Joseph F. Saporito, Jr., issued a Report and Recommendation recommending that this Court dismiss the complaint, but permit Bressi to amend his First and Fourteenth Amendment retaliation claim.² Bressi thereafter filed motions for reconsideration and motion to stay this matter, which the Court denied on November 19, 2019.³ The Court permitted Bressi to file objections to the Report and Recommendation on or before December 16, 2019, but no timely objections were filed.⁴

¹ Doc. 31.

² Doc. 38.

³ Docs. 40, 41, 43, 51.

⁴ The Court notes that Bressi has filed an appeal of this Court's order denying his motions for reconsideration. (Doc. 53). Ordinarily, "the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.⁵ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.⁶ Upon review of the record, the Court finds no clear error, clear or otherwise, in Magistrate Judge Saporito's recommendations. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (Doc. 38) is **ADOPTED**;
2. Bressi's motion for contempt (Doc. 50) is **DENIED**;
3. Bressi's amended complaint (Doc. 31) is **DISMISSED** with prejudice, with the exception of his First and Fourteenth Amendment retaliation claim, which is dismissed without prejudice; and

district court of its control over those aspects of the case involved in the appeal.” *United States v. Santarelli*, 929 F.3d 95, 106 (3d Cir. 2019) (brackets and internal quotation marks omitted). However, “the jurisdiction of the lower court to proceed in a cause is not lost by the taking of an appeal from an order or judgment which is not appealable.” *Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985). There appear to be no jurisdictional grounds for Bressi's appeal of this Court's non-final order denying reconsideration, and that appeal therefore does not deprive this Court of jurisdiction to consider the Report and Recommendation.

⁵ Fed. R. Civ. P. 72(b), advisory committee notes; see *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

4. Bressi may, within 30 days of the date of this Order, file an amended complaint that addresses the deficiencies identified by Magistrate Judge Saporito with respect to Bressi's retaliation claim.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge

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

AARON J. BRESSI,

Plaintiff,

v.

TRACY MCCLOUD, *et al.*,

Defendants.

No. 4:18-CV-01345

(Judge Brann)

(Magistrate Judge Saporito)

ORDER

MARCH 20, 2020

Aaron J. Bressi filed an amended 42 U.S.C. § 1983 complaint alleging that numerous individuals violated his civil rights.¹ On December 30, 2019, this Court adopted Magistrate Judge Joseph F. Saporito, Jr.'s, Report and Recommendation and dismissed the amended complaint, but permitted Bressi to file a second amended complaint within thirty days that addressed the deficiencies identified with his First and Fourteenth Amendment retaliation claim.² More than thirty days elapsed and Bressi did not file an amended complaint. Consequently, on February 4, 2020, Magistrate Judge Saporito issued a Report and Recommendation recommending that

¹ Doc. 31.

² Doc. 55.

this Court dismiss Bressi's retaliation claim with prejudice and close this case.³ No timely objections were filed to this recommendation.⁴

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.⁵ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.⁶ Upon review of the record, the Court finds no clear error, clear or otherwise, in Magistrate Judge Saporito's recommendation. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (Doc. 60) is **ADOPTED**;
2. Bressi's First and Fourteenth Amendment retaliation claim is **DISMISSED** with prejudice; and

³ Doc. 60.

⁴ The Court notes that Bressi has filed an appeal of this Court's previous Orders. (Docs. 53, 57). Ordinarily, "the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Santarelli*, 929 F.3d 95, 106 (3d Cir. 2019) (brackets and internal quotation marks omitted). However, "the jurisdiction of the lower court to proceed in a cause is not lost by the taking of an appeal from an order or judgment which is not appealable." *Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985). There appear to be no jurisdictional grounds for Bressi's appeal of this Court's prior non-final orders, and his appeal therefore does not deprive this Court of jurisdiction to consider the Report and Recommendation.

⁵ Fed. R. Civ. P. 72(b), advisory committee notes; see *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

3. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge

APPX.

C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

AARON J. BRESSI, #MC9898,

Plaintiff,

v.

TRACY MCCLOUD, et al.,

Defendants.

CIVIL ACTION NO. 4:18-cv-01345

(BRANN, J.)

(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This is a federal civil rights action, commenced by the filing of a *pro se* complaint, signed and dated by the plaintiff, Aaron J. Bressi, on June 25, 2018. (Doc. 1.) At the time of filing, the plaintiff was incarcerated at SCI Rockview, a state prison facility located in Centre County, Pennsylvania. He has been granted leave to proceed *in forma pauperis* in this action.

The original complaint was superseded by an amended complaint, signed and dated by the plaintiff on February 25, 2019, and filed as a matter of course. (Doc. 31.) On December 30, 2019, the amended complaint was dismissed as frivolous and for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), 28 U.S.C. § 1915(e)(2)(B)(ii), and 42 U.S.C. § 1997e(c)(1). (Doc. 55.) The

amended complaint was dismissed with prejudice, with the exception of a First and Fourteenth Amendment retaliation claim, which was dismissed without prejudice to permit the plaintiff to file a second amended complaint curing certain pleading defects identified in our earlier report and recommendation. (*Id.*; see also Doc. 38.) The dismissal order granted Bressi leave to file a second amended complaint within thirty days. (Doc. 55.)

Bressi has failed to timely file a second amended complaint.¹ Accordingly, for the reasons stated in our previous report and recommendation (Doc. 38), it is recommended that:


1. The plaintiff's Fourth and Fourteenth Amendment retaliation claim be **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), 28 U.S.C. § 1915(e)(2)(B)(ii),

¹ We retain jurisdiction despite Bressi's premature filing of a notice of appeal (Doc. 57) from the dismissal order, which dismissed some of his claims without prejudice. See *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976) (per curiam) ("Generally, an order which dismissed a complaint without prejudice is neither final nor appealable because the deficiency may be corrected by the plaintiff without affecting the cause of action."). Bressi has not expressly notified the Court that he intends to stand on the amended complaint. See *id.* at 951 n.1.

and 42 U.S.C. § 1997e(c)(1); and

2. The Clerk be directed to **CLOSE** this case.

Dated: February 4, 2020


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI, #MC9898,

Plaintiff,

v.

TRACY MCCLOUD, et al.,

Defendants.

CIVIL ACTION NO. 4:18-cv-01345

(BRANN, J.)

(SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated February 4, 2020.

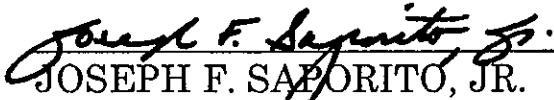
Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which

objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: February 4, 2020


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

Appx.

D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-1077 & 20-1758

AARON J. BRESSI,
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v.

TRACY MCCLOUD; BRITTANY DUKE; RONALD MCCLAY; MATTHEW
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KOVACH; DEPUTY WARDEN JAMES SMINK;
COUNSELOR SAMUEL KRANZEL

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4:18-cv-01345)

SUR PETITION FOR REHEARING

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

* Hon. Robert E. Cowen's vote is limited to panel 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 circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

s/Michael A. Chagares
Circuit Judge

Dated: December 2, 2021

cc: Aaron J. Bressi

Appx.

E

(Page 1) 25th Day of Feb. 2019

Amended Complaint, Case # 4:18-CV-1345

Attn: Office of the Clerk

I Aaron J. Bressi am writing this letter to this Honorable Courts in regards to Case # 4:18-CV-1345. I am asking this Honorable Courts to amend this case under (Fed. R. Civ. P. 15(a)(2)).

I am also letting this Honorable Courts know that, in this amended Complaint, Statement of Complaints 1 through 14 stayed the same as original complaint, with the exception of Statement of Complaint # 3 which was amended to Case # 4:17-CV-01742 on the 31st. day of Jan. 2019, and removed from this case.

I Aaron J. Bressi am letting this Honorable Courts know that the newly amended Statement of Complaints to this case are # 15 and # 16, and with (Exhibits A-F) sent as evidence to amend this Complaints to this Case, this Honorable Courts should

(Page 2) 25th Day of Feb. 2019
Amended Complaint, Case # 4:18-cv-1345

grant this amendment under
a (matter of Law).

I Aaron J. Bressi am also
amending to this Suit, that all
government officials / defendants
claims will be brought against
them in there Official Capacity,
and also in there individual
Capacity. And of course all claims
brought against the civilians
listed in this Suit will be
individual Capacity only.

Thank you,
Aaron Bressi
2-25-19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI, #MC9898,

Plaintiff,

v.

TRACY MCCLOUD, et al.,

Defendants.

CIVIL ACTION NO. 4:18-cv-01345

(BRANN, J.)

(SAPORITO, M.J.)

FILED
WILKES BARRE

AUG 05 2019

PER MS
DEPUTY CLERK

ORDER

This matter comes before the Court on the *pro se* plaintiff's letter-motion for leave to file an amended complaint in this matter. (Doc. 15.) *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–46 (3d Cir. 2013) (discussing a court's obligation to liberally construe *pro se* pleadings and other submissions, particularly when dealing with imprisoned *pro se* litigants). He has attached a complete copy of his proposed amended complaint to the letter-motion. (Doc. 15-1; Doc. 15-2; Doc. 15-3; Doc. 15-4.)

Rule 15(a) of the Federal Rules of Civil Procedure allows a party to amend a pleading *once* as a matter of course (*i.e.*, without leave of court) within 21 days after serving it, or within 21 days after service of a responsive pleading or motion under Rule 12(b), (3), or (f). *See Fed. R.*

Civ. P. 15(a)(1). The plaintiff has not previously filed an amended complaint. The defendants have not filed an answer to the complaint, nor a motion under Rule 12(b), (e), or (f).


Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The plaintiff's letter-motion for leave to amend (Doc. 15) is **DENIED as MOOT;**

2. The Clerk shall **DOCKET** the proposed amended complaint (Doc. 15-1; Doc. 15-2; Doc. 15-3; Doc. 15-4) as the plaintiff's amended complaint, filed by the plaintiff as a matter of course under Fed. R. Civ. P. 15(a)(1); and

3. The Clerk shall **ADD** Kimberly Seddon, Chasity Seddon, Warden Bruce Kovach, Deputy Warden James Smink, and Counselor Samuel Kranzel as party-defendants to this action.

Dated: August 5, 2019


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

APPX.

F

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Case Number: 19-3894, 20-1077, 20-1758

Case Name: Aaron Bressi V. Tracy McCloud, et al.

District Court Case Number: 4:18-cv-01345

INFORMAL BRIEF

DIRECTIONS: Answer the following questions about your appeal or petition for review to the best of your ability. Use additional sheets of paper if necessary. You need not limit your brief solely to this form, but you should be certain that any brief you file contains answers to the questions below. The Court prefers short and direct statements.

1. **Jurisdiction:** What order(s) of the district court or agency are you appealing? (Doc. 51), (Doc. 55), (Doc. 61), Entire Case/dockets/filings
Please (See) all three filed arguments in support.
What is the date of the order(s)?
(11-19-19), (12-30-19), (3-20-20).

When did you file your notice of appeal or petition for review?
(12-9-19), (1-6-20), (4-3-20).

2. **Statement of the case:** Explain the proceedings in the district court or before the agency (i.e. what the district court or the agency did in deciding your case).

Please (See) attached Paper, stapled to the back of this page, for question # 2. Statement of the Case.

(Page 1)

(Continued from Page 1)

2. Statement of the Case:

1. The District Court erred by not serving all defendants listed in this case with a copy of their summons and Complaint, pursuant to (Fed. R. Civ. P. 8(a)). Please See (Doc. 29) and (Doc. 30). Also (See) Garrett V. Wexford Health, 938 F.3d 69, U.S. App. Lexis 27253 (2019).

2. The District Court erred by not amending Plaintiff's amended Complaint, pursuant to the way and why plaintiff stated in his motion to amend Complaint, when amended Complaint was filed. Please See (Doc. 30), (Doc. 40) and (Doc. 43). Also (See) Eberhardinger V. City of York, 782 Fed. Appx. 180, U.S. App. Lexis 23341 (2019).

(Page 2)

(Continued from Page 1)

2. Statement of the Case:

3. The District Court erred by not serving each of the two County Court Office's an order by a Federal Judge to obey and follow all rules and regulations on the Subpoenas I served on each office, to obtain evidence against multiple defendants listed in this Case. Please See (Doc. 45 and 46), also (Doc. 47) and (Doc. 50). Please (See) Malibu Media, LLC. V. John Does 1-11, U.S. Dist. Lexis 26217 (2013).

(Page 3)
(Continued from Page 1)

#2. Statement of the Case:

4. The District Court erred by dismissing the Claims brought against the defendants on plaintiff's amended Complaint for failure to state a claim. Please See (Doc. 15), (Doc. 30) and (Doc. 31). Also (See) Grayson V. Mayview State Hosp., 293 F.3d 103, 108 (3rd Cir. 2002).

5. The District Court erred by disallowing the amended Complaint with respect to all Claims, and also including the Retaliation Claim dismissal. Please See (Doc. 15), (Doc. 30) and (Doc. 31). Also (See) Grayson V. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

(Page 4)
(Continued from Page 1)

2. Statement of the Case:

6. Also (See) all three filed arguments in support of plaintiff's appeal through this Honorable Appeals Court, Case No. 19-3894 filed/docketed (1-24-20), Case No. 20-1077 filed/docketed (2-12-20), Case No. 20-1758 filed/docketed (6-15-20).

3. **Statement of facts:** Explain the facts and events that led to the complaint in the district court or the action before the agency.

Please (see) District Court Docket Sheets / Docket on file for Case No. 4:18-cv-1345, Amended Complaint (Doc. 15) and (Doc. 31). Also (see) all docketed (Exhibits) filed as evidence per each defendants Statement of Complaint listed in this Case.

4. **Statement of related cases:** Have you filed an appeal or petition for review in this case before? If so, give title of case and docket number. yes,

Aaron Bressi v. Tracy McCloud, et al.
19-3894, 20-1077, 20-1758

Do you have any cases related to this case pending in the district court, in the court of appeals or before the agency? If so give title of case and docket number. yes,

Aaron Bressi v. Jeffery Brennen, et al.
District Court Case No. 4:17-cv-1742
Appeals Court Case No. 19-3199

5. Did the district court or the agency incorrectly decide the facts of your case? yes If so, what facts?

All facts of the Case, are stated throughout all documents/dockets filed along with this informal brief. Also (see) five page argument in Support of Plaintiff's appeal through this Honorable Appeals Court, Case No. 19-3894 filed/docketed (1-24-20). Case No. 20-1077 filed/docketed (2-12-20). Case No. 20-1758 filed/docketed (6-15-20).

6. Did the district court or the agency apply the wrong law (either cases or statutes)? yes
If so, what law do you want applied?

Please (see) District Court Docket Sheets / Docket on file for Case No. 4:18-CV-1345, Amended Complaint (Doc. 15) and (Doc. 31). Also (see) all dockets / documents that are filed with this informal brief. Motion to appoint Counsel (Doc. 25), Order denying letter-motion for leave to amend (Doc. 30), Motion for extension of time (Doc. 39), Objections to magistrate orders / Motion for reconsiderations (Doc. 40) and (Doc. 41), Motion for an Obey and Stay (Doc. 43), Subpoenas to two Northumberland County Office's (Doc. 45) and (Doc. 46), Letter of Service for Subpoenas (Doc. 47), Motion for Contempt (Doc. 50). Also (see) all three arguments in support appeals through this Honorable Appeals Court docketed for Case No. 19-3894 (1-24-20), for Case No. 20-1077 (2-12-20), for Case No. 20-1758 (6-15-20).

7. Are there any other reasons why the district court's judgment or the agency's decision was wrong? No

If so, briefly state these reasons.

N/A

8. What action do you want the Court of Appeals to take in this case?

Please (See) attached Paper, stapled to the back of this page, for question # 8, this question.

Aaron Bressi / 8-11-20
Signature

You may attach any documents filed in the district court or before the agency that you think the court of appeals must see in order to decide your appeal or your petition for review. For appeals from the district court, please keep in mind that the entire district court record is transmitted to the court of appeals and is available for the court's review. You must attach copies of the district court docket entries, the opinion and order appealed, and the notice of appeal. Documents not admitted in the district court may not be submitted to the court of appeals without permission of the court.

IMPORTANT: IF YOU ARE PROCEEDING PROCEEDING IN FORMA PAUPERIS, YOU MUST FILE AN ORIGINAL AND THREE (3) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. IF YOU HAVE PAID THE DOCKETING FEE, YOU MUST FILE AN ORIGINAL AND TEN (10) COPIES OF THIS BRIEF AND ANY ATTACHMENTS WITH THE CLERK. A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST ALSO BE SENT TO ALL OPPOSING PARTIES. YOU MUST CERTIFY ON THE ATTACHED PROOF OF SERVICE THAT A COPY OF THIS BRIEF AND ANY ATTACHMENTS WERE SENT TO ALL OPPOSING PARTIES.

(Continued from Page 5)
(Page 1)

#8: What action do you want the Court of Appeals to take in this Case?

I Aaron J. Bressi ask this Honorable United States Appeals Court Under 28 U.S.C. § 1291, and also pursuant to Fed. R. App. P. 3(c)(1)(B) and 4(a) 4(A), that this Honorable Appeals Court Would remand this Case back to the Honorable District Court with Specific Instructions for the District Court Clerk's office to serve the defendants a copy of thier Summons and Complaint, along with a copy of every filing filed against each defendant with an order per each filing stating the number of days per each filing they have to respond to the Honorable District Courts Clerk's office with there response to thier Summons and Complaint,

(Page 2)

(Continued from Page 5)
question # 8.

and also there response in opposition to the filings already against each filed defendant.

I also ask that this Honorable Appeals Court would reverse all orders/dockets in this appeal that the Honorable District Court erred on when ruled upon, and or remand all orders/dockets that the Honorable District Court erred on when ruled upon, back to the Honorable District Court with orders that have specific instructions from this Honorable United States Court of Appeals.

PROOF OF SERVICE

I certify that on 8-11-20 (date) I mailed a copy of this brief and all attachments via first class mail to the following parties at the addresses listed below:

I Aaron J. Bressi have not served any of the defendants listed in this case a copy of this filed informal brief. The reason for this is the District Court did not/erred to serve any defendants listed in this case, and due to the Certificate of Service rules I have not yet been required to do so.

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 8-11-20 (date) for forwarding to the Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.

Aaron Bressi
Signature

Dated: 8-11-20

APPX.

G

(Page 1) 9th Day of Nov. 2021

Nos. 20-1077, 20-1758

Attn: office of the Clerk

United States Court
of Appeals

Aaron J. Bressi - Appellant
V.

Tracy McCloud, et al. - Defendants

Nos. 20-1077, 20-1758

District Court Case No. 4:18-CV-1345

Petition: For Rehearing.

1.) I Aaron J. Bressi ask
this Honorable United States
Court of Appeals in this
petition for rehearing, to
grant petitioner this rehearing
due to first of all this
Honorable Appeals Court never
even made a ruling/
decision on appellant's motion
for appointment of Counsel
like stated at the very

(Page 2) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

end of appeals Court Order dated the 14th Day of Oct. 2020, like this Honorable Appeals Court States it would in that order.

It States the Honorable District Court does have discretion to request and or grant an attorney to represent any person Unable to afford Counsel pursuant to (28 U.S.C. § 1915 (e) (1); (See)

Montgomery V. Pinchak, 294 F.3d 492, 499 (3d Cir. 2002); (See also) Tabron V. Grace, 6 F.3d 147, 153 (3d Cir. 1993).

Also it States the United States Court of Appeals for the Third Circuit also has the discretion to grant and or appoint Counsel for an indigent / Pro Se litigant. It States

(Page 3) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

appointment of Counsel should be made when Circumstances indicate the likelihood of Substantial prejudice to him resulting, for example, from his probable inability without such assistance to present the facts and legal issues to the Court in a Complex, but arguably meritorious Case. (See) Smith - Bey V. Petsock, 741 F.2d 22, 26 (3d Cir. 1984).

2.) The Honorable District Court did in fact erred in not serving the defendants. It states, A document filed (Pro Se) is to be liberally construed, and a pro se Complaint, however inartfully pleaded, must be held to less stringent Standards than formal

(Page 4) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

pleadings drafted by lawyers.
(See) Erickson V. Pardus,
551 U.S. 89, 94, 127 S. Ct.
2197, 167 L. Ed. 2d 1081
(2007) (Citing Estelle V.
Gamble, 429 U.S. 97, at
106, 97 S. Ct. 285, 50 L. Ed.
2d 251, (1976); (see also)
Boykin V. KeyCorp, 521
F.3d 202, 214 (2d Cir.
2008).

3.) The Honorable District
Court did in fact erred by
not amending petitioner's/
plaintiff's amended
Complaint pursuant to the
way and why plaintiff
stated in his motion to
amend Complaint, when
amended Complaint was filed.
Which in fact was to
have these Claims brought
against defendants in
their Individual Capacity

(Page 5) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

also. This would remove all Absolute Immunity from all defendants against these Claims, as well as their Complaints and Claims being barred by the Eleventh Amendment.

It States Qualified Immunity Shields government Officials from Civil damages liability unless the Officials Violated a Statutory or Constitutional right that was Clearly established at the time of the Challenged Conduct, which these defendants knowingly did. (See) Taylor V. Barkes, 135 S. Ct. 2042, 2044, 192 L. Ed. 2d 78 (2015) (quoting Reichle V. Howards, 566 U.S. 658, 664, 132 S. Ct. 2088, 182 L. Ed. 2d 985 (2012).

It also states qualified immunity provides ample

(Page 6) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

protection to all but the plainly incompetent or those who knowingly violate the law), which these defendants knowingly did. (See)

Blackhawk V. Pa., 381 F.3d 202, 215 (3d Cir. 2004).

The Honorable District Court already knew from the Complaints and exhibits filed as evidence towards Complaints, the Constitutional Violations found were clearly established at the time of the defendants alleged misconduct. (See) Pearson V Callahan, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed 2d 565 (2009).

4.) The Honorable District Court did in fact erred on not holding both Northumberland County Custody and PFA Office and Northumberland County

(Page 7) 9th Day of Nov. 2021

Nos. 20-1077, 20-1758

Clerk of Courts Office in Contempt, by not granting plaintiff's Motion: To hold in Contempt, pursuant to (Fed. R. Civ. P. 45(g)). (See) (DOC. 50); (See also) Malibu Media, LLC v. John Does 1-11, U.S. Dist. Lexis 26217 (2013). These both Northumberland County Office's were Correctly Served their Subpoenas by following (Fed. R. Civ. P. 45(c), (d), (e), and (g)); and both failed without adequate excuse to obey their Subpoenas.

5.) The Honorable District Court 100% without a doubt erred by dismissing plaintiff's Claims for failure to state a Claim. It states every person who, under color of any Statute, ordinance, regulation, custom, or usage, of any

(Page 8) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

State or Territory or the District of Columbia, Subjects, or Causes to be Subjected, any Citizen of the United States or other person within the Jurisdiction thereof to the deprivation of any rights, privileges, or immunities Secured by the Constitution and laws, shall be liable to the party injured in an action at law.... To State a claim under Section 1983, a plaintiff is required to show that an individual acting under color of State law violated the plaintiff's Constitutional rights or Statutory rights. (See) West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

It also States in order for a plaintiff to adequately State a claim

(Page 9) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

Under Section 1983, he must establish that the defendant(s) deprived him of a right(s) Secured by the United States Constitution acting under Color of State law. (See) Mark V. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995).

6.) The Honorable District Court also again, 100% without a doubt erred in dismissing plaintiff's claims without affording him the opportunity to amend his claims regardless of the fact they allowed plaintiff to amend retaliation claim.

It states, a plaintiff alleging a Constitutional violation must portray specific conduct by officials which violates some Constitutional right. (See)

(Page 10) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

Chavarriaga V. New Jersey
Dep't of Corr., 806 F.3d
210, 222 (3d Cir. 2015). By
doing so, a plaintiff must
demonstrate a defendant's
(Personal Involvement) in the
alleged Constitutional
violation by adequately
alleging either (1) the
defendant's personal
involvement in the alleged
violation; or (2) his actual
knowledge and acquiescence
in the wrongful conduct.
(See) Rode V. Dellarciprete,
845 F.2d 1195, 1207
(3d Cir. 1988).

Therefore, I Aaron
J. Bressi the plaintiff now
has shown this Honorable
United States Court of Appeals
all the issues, facts, and
grounds, to why the
Honorable District Court
erred throughout this entire

(Page 11) 9th Day of Nov. 2021
Nos. 20-1077, 20-1758

Case in this petition for rehearing. This Honorable Appeals Court Should 100% without a doubt grant this petitioner's petition for rehearing, and review the Court's decision by taking a closer clearer look at this entire appeal.

Thank You,
Aaron Bressi
(11-9-21)

Case Nos. 20-1077, 20-1758

(Page 12) 9th Day of Nov. 20
Nos. 20-1077, 20-1758

(Certificate of Service)

I Aaron J. Bressi have not Served any of the defendants listed in this Case a Copy of this filed Petition for rehearing. This Honorable United States Court of Appeals was the only one Served a Copy through Certified first Class mail.

The reason for this is the Honorable District Court erred to Serve any defendants listed in this Case. Also I was not ordered by this Honorable Appeals Court to do so either due to the rules of Certificate of Service.

Thank You,
Aaron Bressi
(11-9-21)

Case Nos. 20-1077, 20-1758