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APPENDIX (A)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2659

NOEL BROWN,
Appellant

v.

SOMERSET SCI, Administration Office;
ERIC TICE, Superintendent SCI Somerset;
B. COSTEA, Unit Manager SCI Somerset;
PENNSYLVANIA BUREAU OF CORRECTIONS, Division of Treatment Services

(W.D. Pa. No. 3-22-cv-00020)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ,
KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, CHUNG, and SCIRICA*, Circuit Judges

The petition for rehearing filed by Appellant Noel Brown 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

* Judge Scirica's vote is limited to panel rehearing only.

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/ Cheryl Ann Krause
Circuit Judge

Dated: July 21, 2023
Lmr/cc: Noel Brown
All Counsel of Record

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2659

NOEL BROWN,
Appellant

v.

SOMERSET SCI, Administration Office;
ERIC TICE, Superintendent SCI Somerset;
B. COSTEA, Unit Manager SCI Somerset;
PENNSYLVANIA BUREAU OF CORRECTIONS, Division

(W.D. Pa. No. 3-22-cv-00020)

Present: KRAUSE, Circuit Judge

1. Motion by Appellant Noel Brown to File Exhibits to Petition for Rehearing

Respectfully,
Clerk/lmr

ORDER

The foregoing motion to file exhibits to petition for rehearing is granted.

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: July 7, 2023
Lmr/cc: Noel Brown
Daniel B. Mullen, Esq.

APPENDIX (B)

Docket No. 22-2659

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOEL BROWN,

Plaintiff-Appellant;

V.

SOMERSET SCI. Administration Office;

ERIC TICE, B. COSTEA, and

PENNSYLVANIA BUREAU OF CORRECTIONS, ET, AL.,

Defendants-Appellees.

On Appeal from the United States

District Court for the Western District of

Pennsylvania, C.V. No.3:22-cv-00020

Brief in Support of Rehearing En Banc

for Appellant Noel Brown

Noel Brown, Pro. Se; SCI. Somerset-1590 WALTER MILL ROAD, SOMERSET, PA.

15510

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STATEMENT OF SUBJECT MATTER
and APPELLATE JURISDICTION

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. §1331.

This Court has Appellate jurisdiction pursuant to 28 U.S.C. §1291.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Should this Court reverse the judgment of the District Court with a finding of fact in favor of the appellant? Suggested Answer: in the Affirmative.

The following issues was decided based on error of law and an abuse of process per se, by the District Court.

a. Resolving Plaintiff's timely and unequivocal Objection to the Magistrate Report and Recommendation.

b.

Plaintiff's not want to amend his complaint until the "District Judge" accept, reject, or modify the said recommendation, and exhaust conclusion by recommending the District judge disposition.

c. For the District judge to request further evidence, as to the question of whether Respond Superior apply within the Objection on the Magistrate Report and Recommendation.

sponte dismissal of a pro se, complaint before the plaintiff have had an opportunity to respond. Anderson v. Coughlin 2nd Cir.(1983).

ARGUMENTS

POINT 1

The court held in Buck v. Hampton twp. Sch. Dist. "A court may consider matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public records, court orders, and items appearing in the records of the case". HERE, it is clear that the plaintiff seeks to resolve issues within the Magistrate Report and Recommendation, considering plaintiff had signed prior to having the case only before the District Judge, and not a Magistrate. THEREFORE, seeking to have issues within the Magistrate (R&R), should be construed as being proper and within plaintiff's right as a course of action. Pursuant to Fed. R. Civ. P. 3rd CIR.

POINT 2

The District Court failure to exhaust conclusion of a Magistrate decision was premature.

The District Judge failure to issue a final order to Amend, if the facts deem just and proper. Resulted in a decision that was based on unreasonable due process of the law. Requiring a District Judge to resole objections ~~thereby evidence our modification the (R&R) heretombed adgdisposet Judge~~ with instructions, pursuant to Rule 72.

POINT 3

STATEMENT OF THE CASE

Plaintiff filed his complaint, in which he stated a short and plain statement of the claims, against the SCI.Somerset defendants etc, showing that the plaintiff is entitled to relief sought. Plaintiff complaint set forth a plausible claim for relief as to the facts that established the How, When, Where, the causation in fact and proximate causation, that the damages would not have occurred but for the defendants wrongful acts. Additionally, the plaintiff's injury's/damages is the natural and probable consequence of the defendants unreasonable and unlawful acts.

The Magistrate Judge, within his (R&R) moved to dismiss plaintiff's complaint for failure to state a claim, with "leave to amend only the claim that one of the correction officers violated the Eighth Amendment Claim.

PLAINTIFF'S RESPONSE

Plaintiff's Objects under Fed.R.Civ.P.72, to the District Judge, and await for instructions pursuant to Fed.R.Civ.P.72(b). Which states the "District Judge, in the case must consider timely objections and modify or set aside any part of the (R" & R) order that is clearly erroneous or contrary to law.

STATEMENT OF FACTS

Plaintiff has the right to seek resolving his objections, with the District Judge pursuant to Fed. R. Civ. P. 3rd CIR.

SUMMARY OF THE ARGUMENTS

The District Court should exercise extreme caution, in ordering sua

First Page

POINT 3

Plaintiff was treated differently from similarly situated plaintiff's. The difference or discriminatory treatment was based on plaintiff pro se, status.

As a pro se, plaintiff is a protected member of indigent class of plaintiffs requiring equal protection of the law in ordering sua sponte dismissal of a pro se, complaint. Trowell v. Theodorakis (2018).

CONCLUSION

Plaintiff respectfully request that this Court reverse its entry of judgement affirming the judgment of the District Court. Additionally, this court error in its findings that the error of law made by the District Court is harmless, "because plaintiff repeatedly insisted that he did not want to amend". Plaintiff only wishes for the District Court to Stare Decisis on the binding authority of Fed.R.Civ.P.72(b). This Court will stipulate stare decisis isn't supposed to be the art of methodically ignoring what everyone knows to be true. The Constitution's text and structure clearly indicate that plaintiff is entitled to a trial by an impartial jury. Not simply in a judge's factual interpretations, not considering plaintiff's preponderance of the evidence that favors the plaintiff over the defendants.

In the alternative this court should remand the case for a fair and impartial trial before an unprejudiced jury on proper evidence and under correct instructions as is just and proper. Thank You.

NOTE MENTIONING: Plaintiff in fair of retribution now seeks for Whistle Blower Status.

APPENDIX (C)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2659

NOEL BROWN,
Appellant

v.

SOMERSET SCI, Administration Office;
ERIC TICE, Superintendent SCI Somerset;
B. COSTEA, Unit Manager SCI Somerset;
PENNSYLVANIA BUREAU OF CORRECTIONS,
Division of Treatment Services

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 3:22-cv-00020)
District Judge: Honorable Stephanie L. Haines

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 21, 2023

Before: Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on April 21, 2023. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 8, 2022, 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: May 2, 2023



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

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2659

NOEL BROWN,
Appellant

v.

SOMERSET SCI, Administration Office;
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PENNSYLVANIA BUREAU OF CORRECTIONS,
Division of Treatment Services

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ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 2, 2023

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2659

NOEL BROWN,
Appellant

v.

SOMERSET SCI, Administration Office;
ERIC TICE, Superintendent SCI Somerset;
B. COSTEA, Unit Manager SCI Somerset;
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District Judge: Honorable Stephanie L. Haines

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 21, 2023

Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

(Opinion filed May 2, 2023)

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.

Noel Brown, proceeding pro se, appeals an order of the United States District Court for the Western District of Pennsylvania dismissing his complaint. For the reasons that follow, we will affirm the judgment of the District Court.

Brown, an inmate at the State Correctional Institution in Somerset, Pennsylvania, filed a complaint pursuant to 42 U.S.C. § 1983 against two correctional officers, the Pennsylvania Department of Corrections, and Somerset-SCI. Brown sought injunctive relief and monetary and punitive damages for violations of the First and Eighth Amendments of the United States Constitution and federal statutes criminalizing mail and wire fraud. Dkt. No. 5 at 3-5. He alleged that, inter alia, correctional officials denied his request for a Kosher meal, removed funds from his inmate account, placed him in a cell with a cellmate despite his fears of contracting COVID-19, and tampered with his mail. Id.

The District Court, over Brown's objections, adopted the Report and Recommendation ("R&R") of a Magistrate Judge and dismissed Brown's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim, with leave to amend only his claim that one of the correctional officers violated the Eighth Amendment by placing Brown in a cell with a cellmate.¹ Dkt. Nos. 10 & 23. Rather than file an

¹ We pause to question whether the Magistrate Judge was correct not to allow Brown to amend his complaint where some of his claims' deficiencies were factual and might have been corrected upon amendment. See Dkt. No. 10 at 2 ("[Brown] gives no dates, no specifics, and no allegation of personal involvement by [the correctional officers.]"). However, to the extent the Magistrate Judge erred by failing to allow Brown to amend, that error is harmless because Brown repeatedly insisted that he did not want to amend his complaint. See Dkt. Nos. 12 at 3, 24 at 1, 27 at 1; C.A. Dkt. Nos. 10 at 3 & 15 at 4; see generally Fed. R. Civ. P. 61; Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263

amended complaint, Brown filed a motion for reconsideration and a notice of appeal. Dkt. Nos. 24 & 29. The District Court denied the motion for reconsideration.² Dkt. No. 32.

We have jurisdiction under 28 U.S.C. § 1291.³ See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 n.5 (3d Cir. 1992); Borelli v. City of Reading, 532 F.2d 950, 951-52 (3d Cir. 1976) (per curiam). We exercise plenary review over the District Court's sua sponte dismissal of Brown's complaint. Dooley v. Wetzel, 957 F.3d 366, 373 (3d Cir. 2020). We construe pro se filings liberally, see Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and "are more forgiving of pro se litigants for filing relatively unorganized or somewhat lengthy complaints," Garrett v. Wexford Health, 938 F.3d 69, 92 (3d Cir. 2019).

F.3d 296, 328-29 (3d Cir. 2001).

² Though Brown argues on appeal that the District Court erred in denying his motion for reconsideration, his notice of appeal encompassed only the District Court's order dismissing his complaint. See Dkt. No. 29; Fed. R. App. P. 4(a)(4)(B)(ii). Even if we were to consider Brown's argument that, in considering his motion for reconsideration, the District Court failed to comply with Federal Rule of Civil Procedure 72, C.A. Dkt. No. 15 at 5-7, these arguments are plainly without merit. In compliance with Rule 72, the District Court considered Brown's objections to the Magistrate Judge's R&R recommending denial of the motion and conducted a de novo review. Dkt. No. 32 at 3; see Fed. R. Civ. P. 72(b)(3).

³ The District Court initially dismissed one of Brown's claims without prejudice but, as noted, Brown made numerous statements indicating that he did not want to amend his complaint. Accordingly, this Court has jurisdiction over the appeal. See Borelli, 532 F.2d at 951-52.

On appeal, Brown challenges the District Court's ruling that he failed to state a claim under the Eighth Amendment based on his placement in a cell with a cellmate.⁴ C.A. Dkt. No. 15 at 5-8. We agree with the District Court.

Brown asserted that he requested placement in a single cell because he was fearful of COVID-19, that the correctional officer was "vindictive" in placing him with a cellmate, and that he experienced symptoms of the virus. Dkt. No. 5 at 5. However, he did not provide further information about his risk of becoming seriously ill or the correctional officer's knowledge of any excessive risk to him. His general assertions do not support a claim that his constitutional rights were violated. See White v. Napoleon, 897 F.2d 103, 108-09 (3d Cir. 1990) ("Only 'unnecessary and wanton infliction of pain' or 'deliberate indifference to the serious medical needs' of prisoners are sufficiently egregious to rise to the level of a constitutional violation.") (citations omitted); Africa v. Pennsylvania, 662 F.2d 1025, 1036 n.23 (3d Cir. 1981) ("While the Commonwealth does not run afoul of the [E]ighth [A]mendment by refusing to provide [the prisoner] with what he wants, it may do so by refusing to provide him with what he needs."). Although the District Court properly provided Brown the opportunity to amend this claim, Brown repeatedly declined to do so.

We will affirm the judgment of the District Court.

⁴ To the extent that Brown raised additional arguments for the first time in his reply brief regarding the District Court's rulings on his claims related to the opening of his mail, his religious practices, and his inmate account, C.A. Dkt. No. 23 at 4, 8, 9, we deem any such argument forfeited. See Haberle v. Borough of Nazareth, 936 F.3d 138, 141 n.3 (3d Cir. 2019).

Appendix (D)

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

NOEL BROWN,
Plaintiff,

v.

S.C.I. SOMERSET, *et al.*,
Defendants

:
:
:
:
:
:

Case No. 3:22-cv-20-SLH-KAP

Report and Recommendation

Recommendation

The plaintiff's motion to reopen his case at ECF no. 24, whether considered as a motion under Fed.R.Civ.P. 59(e) or Fed.R.Civ.P. 60(b)(6), should be denied.

Report

Noel Brown, an inmate in the custody of the Pennsylvania Department of Corrections and therefore subject to the Prison Litigation Reform Act, filed a complaint in February 2022, complaining about conditions at S.C.I. Somerset. I screened the complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and recommended that it be dismissed for failure to state a claim with leave to amend. I advised Brown that failure to file an amended complaint would result in his complaint being reviewed as submitted. Brown filed timely objections but did not amend his complaint. The Court, noting the lack of amendment, dismissed the complaint on August 8, 2022. ECF no. 23.

The instant motion followed, accompanied by a four-page brief at ECF no. 25 that states general principles of law but is untethered to the allegations of the complaint, my review, or the Court's dismissal.

Courts are free to characterize *pro se* post-judgment motions according to their substance rather than their titles. Moton v. Wetzel, 833 Fed.Appx. 927, 930 (3d Cir. 2020), citing Walker v. Astrue, 593 F.3d 274, 279 (3d Cir. 2010) and Lewis v. Attorney General, 878 F.2d 714, 722 n.20 (3d Cir. 1989). Brown's motion is best understood as one under Rule 59(e).

Brown gives no reason to alter the judgment. The proper bases for a Rule 59(e) motion are (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice. Wiest v. Lynch, 710 F.3d 121, 128 (3d Cir. 2013) (citations omitted). A motion under Rule 59(e), like one under Rule 60(b), is not a device to relitigate a matter, see Heath v. Superintendent Frackville SCI, 582 Fed.Appx. 82, 85 (3d Cir. 2014), nor a substitute for an appeal. See Abulkhair v. Google, LLC, 839 Fed.Appx. 763, 765 (3d Cir. 2021), citing United States v. Fiorelli, 337 F.3d 282, 288 (3d

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

NOEL BROWN,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 3:22-cv-20
)	Judge Stephanie L. Haines
SCI SOMERSET, <i>et al.</i> ,)	Magistrate Judge Keith A. Pesto
)	
Respondents.)	
)	
)	
)	

MEMORANDUM ORDER

Presently before the Court is a complaint in civil action filed *pro se* by Noel Brown ("Plaintiff") (ECF No. 5). Plaintiff is currently incarcerated at State Correctional Institution ("SCI") Somerset. In his Complaint, Plaintiff argues that his First and Eighth Amendment rights were violated because he was denied his request for kosher meals, his meals were poisoned, his mail was opened and contents taken, he was denied access to appeals court, funds were taken from his inmate account without his permission, and he was placed in a cell with a cellmate despite his request to be placed in a single cell due to fear of contracting COVID-19.¹ See ECF No. 5, pp. 3, 5. Plaintiff also alleges that after he was placed in a cell with a cell mate he suffered from COVID-19 symptoms and was injured when he passed out. See ECF No. 5, p. 5. Plaintiff brings this Complaint against four defendants: SCI-Somerset, Pennsylvania Department of Corrections

¹ Plaintiff also asserts his claims under the federal crimes of mail fraud and wire fraud. See ECF No. 5, p. 3. Mail fraud is committed when a person engages in a scheme to defraud, with intent to defraud, and uses the mails in furtherance of that scheme. See 18 U.S.C. § 1341. Wire fraud requires the same elements with the use of an interstate wire transmission. See 18 U.S.C. § 1343. Plaintiff does not plead any of the elements of these crimes in his Complaint. Furthermore, such claims are inappropriate in the context of a civil action.

("DOC"), Eric Tice ("Tice"), Superintendent of SCI-Somerset, and Costea, Unit Manager of SCI-Somerset, all in their official capacities, and also in the individual capacities of Tice and Costea. *See id.* at 2-3. Plaintiff seeks monetary damages and injunctive relief releasing him from prison.

This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.D. On May 9, 2022, Magistrate Judge Pesto filed a Report and Recommendation (ECF No. 10) recommending that the Complaint (ECF No. 5) be dismissed. Plaintiff was advised he had fourteen days to file objections to the Report and Recommendation. *See* 28 U.S.C. § 636 (b)(1)(B) and (C) and Local Civil Rule 72.D.2. Plaintiff filed objections on May 19, 2022 (ECF No. 12) stating that Judge Pesto's Report and Recommendation failed to account for an investigative DNA report by an expert. Plaintiff further reargued his case of an Eighth Amendment violation due the "inhumane conditions of confinement" during the COVID-19 pandemic and an alleged poisoning of his food. Finally, Plaintiff suggests staying this case pending the outcome of one of Plaintiff's criminal cases and the DNA results.²

I. Legal Standard

When a party objects timely to a magistrate judge's report and recommendation, the district court must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)); *see also* Local Civil Rule 72.D.2. Upon *de novo* review of all documents, pleadings, and filings of record, and the Report and

² Plaintiff's criminal case *Comm. v. Brown, Noel L.* (CP-64-CR-0000258-2016) is currently on appeal. However, there is no reason to stay the case at issue here as the outcome of the criminal case has no bearing on the disposition in this civil case. Plaintiff seemingly raises the appeal in his Objections to the Report and Recommendation because funds may have been withdrawn from his prison account to cover the costs of the appeal and/or a DNA test related to the appeal. Plaintiff asserts a claim that his funds were withdrawn from his account without his permission. However, as stated in Judge Pesto's R&R, the DOC does not need Plaintiff's permission to withdraw funds from his prison financial account to cover such costs under Act 84.

Recommendation (ECF No. 10), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of Magistrate Judge Pesto in this matter.

II. Analysis

As stated above, this is a civil rights case in which Plaintiff asserts that the conditions under which he is incarcerated violate his constitutional rights. Therefore, the Court will focus on the allegations regarding his prison meals, mail tampering, his inmate financial account, and his risk of contracting COVID-19 as they pertain to his living conditions.³

As a threshold matter, Plaintiff's claims against Defendants in their "official capacity" are not cognizable claims. Tice and Costea are protected by sovereign immunity under the Eleventh Amendment for official capacity claims seeking monetary damages. The Eleventh Amendment proscribes actions for money damages in the federal courts against states, their agencies, and state officials acting in their official capacities. See *Laskaris v. Thornburgh*, 661 F.2d 23 (3d Cir. 1981) (Pennsylvania); *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274 (1977) (state agencies); *Edelman v. Jordan*, 415 U.S. 651 (1974) (state employees acting in their official capacity). SCI-Somerset and the Pennsylvania DOC are agencies of the Commonwealth of Pennsylvania, and Tice and Costea are employed by these agencies. As such, all Defendants are entitled to Eleventh Amendment immunity for monetary damages. See *Brown v. Smith*, 2019 WL 2411749 *6 (W.D. Pa. June 7, 2019). Therefore, Plaintiff's claims for monetary relief against Defendants in their official capacities will be dismissed with prejudice.

Having dismissed the official capacity claims against the Defendants, the Court is left to evaluate Plaintiff's individual capacity claims against Tice and Costea. Specifically, Plaintiff

³ Plaintiff's assertions regarding DNA testing and pending criminal appeals would be relevant if he were challenging his sentence in this case, however, such assertions are misplaced in this civil rights action and, therefore, will not be considered by the Court.

claims that he requested, and was denied, Kosher meals while he was housed in the restrictive housing unit ("RHU"), money was taken from his inmate account without his permission, he was denied a single-cell request (for fear of COVID-19), his meals were poisoned, and his mail was being opened and contents of the mail were removed. Plaintiff did not identify either Defendant Tice or Defendant Costea as having personally been involved in any action alleged or as having committed a constitutional violation related thereto in his Complaint or Objection, save one claim in which Plaintiff alleges Costea denied Plaintiff a single-cell and caused him the alleged resultant COVID-19 symptoms.

A plaintiff must plead a defendant's personal involvement in the alleged deprivation of his constitutional right. *See, e.g., Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). That is because, as stated in the text of § 1983 itself, only a person who "subjects, or causes to be subjected" another person to a civil rights violation can be held liable under § 1983. Thus, each defendant is liable only for his or her own conduct. *See, e.g., id.; see also Parkell v. Danberg*, 833 F.3d 313, 330 (3d Cir. 2016); *Barkes v. First Correctional Medical*, 766 F.3d 307, 316 (3d Cir. 2014) (rev'd sub. nom. on other grounds 575 U.S. 822 (2015)); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005) ("To impose liability on the individual defendants, Plaintiffs must show that each one individually participated in the alleged constitutional violation or approved of it.") (citing *C.H. v. Oliva*, 226 F.3d 198, 201-02 (3d Cir. 2000) (*en banc*)). Plaintiff does not relate either Tice or Costea to the mail tampering, the withdraw of funds from his prison account, the denial of Kosher meals,⁴ or the alleged poisoning of his meals, and as such these claims against Tice and Costea are dismissed.

⁴ Plaintiff makes no assertion that his request for Kosher meals was based on his First Amendment right to free exercise of religion and the evidence of record indicates that it was denied for procedural reasons. Furthermore, Plaintiff was provided with a second opportunity to resubmit. *See* ECF No. 5-1.

As to the allegation that Costea "in a vindictive consciously wrongful order" denied Plaintiff a single-cell, ECF No. 5, p. 5, in violation of Plaintiff's Eighth Amendment rights, Plaintiff has failed to satisfy the elements of an Eighth Amendment claim. Two requirements must be met to prove a violation of the Eighth Amendment: First, the deprivation of rights alleged must be, objectively, "sufficiently serious," and second, a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citations omitted). To satisfy the second prong of the test, a prison official must have a "sufficiently culpable state of mind." *Id.* (citations omitted). "In prison-conditions cases that state of mind is one of 'deliberate indifference' to inmate health or safety." *Id.* "A prison official may be held liable under the Eighth Amendment for acting with 'deliberate indifference' to inmate health or safety only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Id.* at 825.

Plaintiff has not presented facts to support either prong of an Eighth Amendment claim. First, Plaintiff has failed to establish that he has been deprived of a constitutional right. There is no constitutionally protected right to a single cell. Therefore, there has been no deprivation of rights. Furthermore, a denial of a single cell does not constitute a denial of life's necessities nor has Plaintiff presented facts that support a substantial risk of serious harm to his health or safety because he shared a cell. Plaintiff simply stated he experienced COVID-19 symptoms without comment of the severity or whether he was considered a high-risk patient of COVID-19. The alleged denial of solitary living conditions is simply not enough to support an Eighth Amendment claim of cruel and unusual punishment. The claim against Costea is dismissed without prejudice.

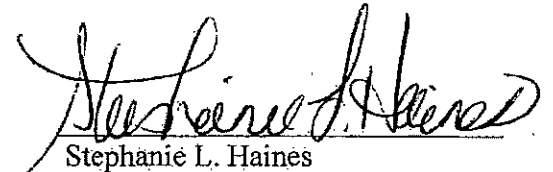
Accordingly, the following order is entered:

ORDER

AND NOW, this 8th day of August, 2022, for the reasons set forth in Magistrate Judge Pesto's Report and Recommendation (ECF No. 10), which is adopted in whole as the opinion of the Court, it is ORDERED that Plaintiff's Complaint (ECF No. 5) be dismissed; and,

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF No. 12) are OVERRULED;
and,

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED as there are no claims remaining in this action.


Stephanie L. Haines
United States District Judge

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