

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

JAMES A. WOLFE,

Plaintiff

v.

JOHN RIVELLO, BARBARA
HOLLIBAUGH, MARK GRIMME,
MEGAN YOST, JESSICA COUSINS,

Defendants

Civil No. 3:24-cv-21

(Judge Mariani)

FILED
SCRANTON

JAN 23 2024

PER

DEPUTY CLERK

ORDER

AND NOW, this 23rd day of January, 2024, upon consideration of the *pro se* Plaintiff's complaint (Doc. 1), accompanied by an application to proceed *in forma pauperis* (Doc. 9), and the prisoner trust fund account statement (Doc. 10), **IT IS HEREBY**

ORDERED THAT:

1. Plaintiff's application to proceed *in forma pauperis* is **GRANTED**. (Doc. 9).
2. Plaintiff shall pay the full filing fee of \$350.00, based on the financial information provided in the application to proceed *in forma pauperis*. The full filing fee shall be paid regardless of the outcome of the litigation.
3. Pursuant to 28 U.S.C. § 1915(b)(1) and (2), the Superintendent/Warden, or other appropriate official at Plaintiff's place of confinement is directed to deduct an initial partial filing fee of 20% of the greater of:
 - a. The average monthly deposits in the inmate's prison account for the past six months, or
 - b. The average monthly balance in the inmate's prison account for the past six months.

The initial partial filing fee shall be forwarded to the Clerk of the United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, Pennsylvania, 18501-1148, to be credited to the above-captioned docket number. In each succeeding month, when the amount in Plaintiff's inmate trust fund account exceeds \$10.00, the Superintendent/Warden, or other appropriate official, shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Plaintiff's inmate trust fund account until the fees are paid. Each payment shall reference the above-captioned docket number.

4. The Clerk of Court is directed to **SEND** a copy of this Order to the Superintendent/Warden of the institution wherein Plaintiff is presently confined.
5. The complaint is **DEEMED** filed.
6. In accordance with Federal Rule of Civil Procedure 4(c)(3), the Clerk of Court is directed to **SERVE** a copy of the complaint (Doc. 1), notice of lawsuit and request to waive service of summons (form AO 398), waiver of the service of summons (form AO 399), and this Order on the named Defendants. In the interests of efficient administrative judicial economy, the Court requests that Defendants waive service pursuant to Federal Rule of Civil Procedure 4(d).
7. If service is unable to be completed due to Plaintiff's failure to properly name the Defendants, or provide an accurate mailing address for the Defendants, Plaintiff will be required to correct this deficiency. Failure to comply may result in the dismissal of Plaintiff's claims against the Defendants pursuant to Federal Rule of Civil Procedure 4(m).



Robert D. Mariani
United States District Judge

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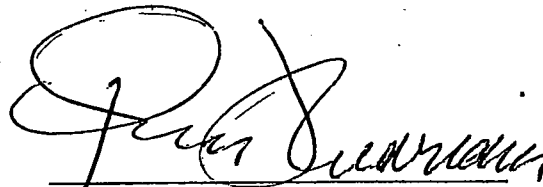
FILED
SCRANTON

APR 10 2024

Per. 
DEPUTY CLERK

ORDER

AND NOW, this 9th day of April, 2024, upon consideration of Plaintiff's motion (Doc. 37) for default judgment, wherein Plaintiff moves for judgment by default on the basis that Defendants' motions to dismiss were untimely filed, and it being clear that Defendants' motions were timely filed on March 25, 2024 (Docs. 31, 32)¹, IT IS HEREBY ORDERED THAT the motion (Doc. 37) for default judgment is DENIED.



Robert D. Mariani
United States District Judge

¹ Federal Rule of Civil Procedure 4(d)(3) provides that "[a] defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States." According to the waivers of service filed by Defendants, they should have filed and served an answer or a motion under Rule 12 within 60 days from January 23, 2024 (i.e., on or before March 25, 2024). (See Docs. 18, 22). Because Defendants responded to Plaintiff's complaint with their March 25, 2024 motions to dismiss (Docs. 31, 32), the Court will deny Plaintiff's motion for default judgment.

**Anthony CALABRO, Petitioner-Appellant, v. UNITED STATES BOARD OF PAROLE et al.,
Respondents-Appellees**

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

525 F.2d 660; 1975 U.S. App. LEXIS 11210

No. 75-3035 Summary Calendar *

December 31, 1975

Editorial Information: Prior History

{1975 U.S. App. LEXIS 1} Appeal from the United States District Court for the Northern District of Georgia.

Disposition:

Affirmed.

Counsel

Anthony Calabro, (Pro Se), U.S. Penitentiary, Atlanta, Georgia, for
Appellant.

John W. Stokes, U.S. Atty., Atlanta, Georgia, Richard A. Horder,
AUSA, U.S. Atty., Atlanta, Georgia, for Appellee.

Judges: Coleman, Ainsworth and Simpson, Circuit Judges.

Opinion

Opinion by:

PER CURIAM

Opinion

{525 F.2d 661} The district court dismissed without hearing Calabro's petition for writ of habeas corpus, which sought review of the denial of parole to the petitioner by the United States Board of Parole.

The Board of Parole has broad discretion in considering parole applications. Judicial review of denial of parole by it is permissible only upon allegations of facts, sufficient if proved, to establish that the Board's action was arbitrary, capricious, or an abuse of discretion. See *Buchanan v. Clark*, 5 Cir. 1971, 446 F.2d 1379, cert. denied, 1971, 404 U.S. 979, 92 S. Ct. 347, 30 L. Ed. 2d 294; *Tarlton v. Clark*, 5 Cir. 1971, 441 F.2d 384, cert. denied, 1971, 403 U.S. 934, 91 S. Ct. 2263, 29 L. Ed. 2d 713; *Thompkins v. United States Board of Parole*, 5 Cir. 1970, 427 F.2d 222. **{1975 U.S. App. LEXIS 2}**

The petition alleged that a progress report prepared for Board consideration by Calabro's caseworker contained "numerous factual errors that if uncorrected would only serve to prejudice him before the Parole Board", and that he was required to sign the report before being permitted to examine it, too late to correct its misstatements of fact. But the petition further alleged that Calabro prepared his own report in the form of a "Prepared Statement In Support of Anthony Calabro's Application for Parole" and that "when the petitioner did appear before the January Board he served the members with copies of his prepared statement and he read the same into the record". It thus appears from the face of the

petition that opportunity was given at the parole hearing for petitioner to object fully to his Progress Report. The Board's January 1975 denial was "set off for one year", meaning that the application would be reconsidered in January 1976. At the time of the parole application Calabro had served 45-46 months of a 12 year sentence for conspiracy and sale of heroin.

It appears from the Board's written assigned reasons for denying parole that full consideration was given by the Board{1975 U.S. App. LEXIS 3} to all pertinent factors, including a past history reflecting "family instability and an extensive property-type criminal record 1 with four previous commitments and two previous parole violations".

An abuse of discretion on the part of the Parole Board was not remotely possible of demonstration upon the petition and record before the district court. No error was committed when the habeas petition was dismissed. *Buchanan*, supra; *Tarlton*, supra; *Thompkins*, supra.

Affirmed.

Footnotes

*

1

Consisting of convictions for (1) assault and robbery, (2) attempted robbery, (3) assault, robbery and escape, and (4) burglary and possession of burglary tools.

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