

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

RICARDO NOBLE, : CIVIL NO. 3:CV-05-1811
Plaintiff :
 : (Judge Munley)
v. :
 :
JEFFREY BEARD, ET AL., :
Defendants :

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MEMORANDUM AND ORDER

Ricardo Noble ("Noble"), an inmate presently incarcerated at the State Correctional Institution at Frackville, Frackville, Pennsylvania, filed this civil rights complaint pursuant to 42 U.S.C. § 1983 on September 7, 2005. (Doc. 1). Noble is presently proceeding *via* an amended complaint.¹ (Doc. 13). He has also filed an application to proceed *in forma pauperis*. (Doc. 2). Under the Prison Litigation Reform Act of 1995² (the "Act"), the Court is obligated to screen the complaint when the plaintiff wishes to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915.³ Specifically, § 1915(e)(2), which was created by § 805(a)(5) of the Act, provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action

¹Preliminary review of the complaint revealed that it did not comply with FED.R.CIV.P. 20(a). (Doc. 12). Noble was directed to file an amended complaint. Noble did so on November 3, 2005. (Doc. 13).

² 1. Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996).

³ 2. An administrative order directing the warden to commence the withdrawal of the full filing fee due the court from the Plaintiff's prison trust fund account has been issued. (Doc. 4).

or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

When considering a complaint accompanied by a motion to proceed *in forma pauperis*, a district court may determine that process should not be issued if the complaint is malicious, presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. See Neitzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir.1989). Indisputably meritless legal theories are those “in which it is either readily apparent that the plaintiff’s complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit.” Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)). “The frivolousness determination is a discretionary one,” and trial courts “are in the best position” to determine when an indigent litigant’s complaint is appropriate for summary dismissal. Denton v. Hernandez, 504 U.S. 25, 33 (1992).

The complaint has been screened and it is concluded that it is subject to dismissal as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Noble contends that defendants, through the use of technology, have installed in cells “. . . some kind of projection system, etc. and some kind of mind violation scan system that allows [prison] staff to read, hear, monitor, record one’s thoughts without the victim (prisoner) speaking or writing. . . .” (Doc. 13, p. 4). He indicates that the system is capable of mimicking a rioting crowd, other prisoners voices, and hissing snakes, *inter alia*, and that it has caused poor conditions of confinement, headaches, dizziness, loss of sleep and interference with his daily activities.

Clearly the complaint is frivolous in that these are patently baseless factual allegations.

Noble also complains that various staff members would come to his cell and threaten and harass him. While the Eighth Amendment protects prisoners from cruel and unusual punishment, not all tortious conduct which occurs in prison rises to the level of a constitutional violation. See Howell v. Cataldi, 464 F.2d 272, 277 (3d Cir. 1972). The use of words, no matter how violent, cannot constitute an assault actionable under 42 U.S.C. §1983. Johnson v. Glick, 481 F.2d 1028, 1033 n.7 (2d Cir. 1973). In addition, mere threatening language and gestures of an officer do not, even if true, amount to constitutional violations. Carter v. Cuyler, 415 F. Supp. 852, 856 (M.D. Pa. 1976).

The Court is confident that service of process is not only unwarranted under the circumstances, but would waste the increasingly scarce judicial resources that § 1915 is designed to preserve. Roman, 904 F.2d at 195, n. 3.

AND NOW, to wit, this 19th day of December 2005, it is hereby **ORDERED** that:

1. The Plaintiff's application to proceed *in forma pauperis* (Doc. 2) is GRANTED;
2. The complaint is DISMISSED as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i);
3. The Clerk of Court is directed to CLOSE this case;
4. Any appeal taken from this Order will be deemed frivolous, without probable cause, and not taken in good faith.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court