

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

EUGENE ROBINSON, :
Plaintiff, : CIVIL ACTION NO. 3:CV-98-1345
vs. :
LIEUTENANT NAPERKOWSKI, : (JUDGE CONABOY)
Defendant. : (Magistrate Judge Durkin)

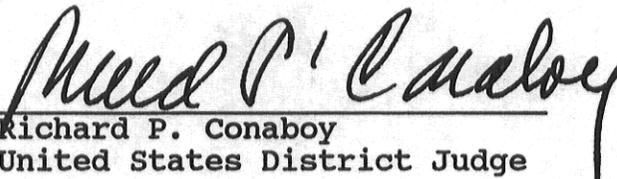
ORDER

NOW, this 29th Day of December, 1998, it is hereby ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 11) is ADOPTED.
2. The Plaintiff's civil rights complaint (Doc. 1) is dismissed, without prejudice, as frivolous pursuant to 28 U.S.C. 1915(e)(2)(B)(i).³
3. The Clerk of Court is directed to close this case.

FILED
SCRANTON

DEC 29 1998


Richard P. Conaboy
United States District Judge

PER 
DEPUTY CLERK

³The dismissal of this action does not relieve Robinson of the obligation to pay the full filing fee. Until the filing fee is paid in full, the Administrative Order issued on September 16, 1998, is binding on the warden of SCI-Pittsburgh and the warden of any correctional facility to which Robinson is transferred.

Certified from the record

Date 12/30/98
Mary E. D'Andrea, Clerk

Per 
Deputy Clerk

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

EUGENE ROBINSON,
Plaintiff,
vs.
Lt. NAPERKOWSKI,
Defendant.

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CIVIL ACTION NO. 3:CV-98-1345

(JUDGE CONABOY)

(Magistrate Judge Durkin)

MEMORANDUM AND ORDER

Presently before the Court is the Report and Recommendation of Magistrate Judge Raymond J. Durkin. (Doc. 11). The Magistrate Judge recommends that the Plaintiff's civil rights action pursuant to 42 U.S.C. § 1983 be dismissed as frivolous pursuant to 28 U.S.C. § 1915. Id. In the alternative, the Magistrate Judge has also recommended that the Plaintiff's action be dismissed for failure to state a claim upon which relief can be granted. Id. The Plaintiff has not filed any objections to the Magistrate Judge's recommended disposition, nor has he requested additional time to do so. After carefully reviewing the Report and Recommendation only for plain error or manifest injustice, Cipollone v. Liggett Group, Inc., 822 F.2d 335, 340 (3d Cir. 1987) cert. denied, 484 U.S. 976 (1987); Henderson v. Carlson, 812 F.2d 875, 878 (3d Cir. 1987), cert. denied, 484 U.S. 837 (1987), we shall adopt the Report and Recommendation of the Magistrate Judge and dismiss the Plaintiff's complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). (Doc. 11).

FILED
SCRANTON
DEC 29 1998

PER OTC
DEPUTY CLERK

BACKGROUND

Eugene Robinson, an inmate at the State Correctional Institute in Pittsburgh (SCI-Pittsburgh), Pennsylvania, filed this civil rights action on August 17, 1998, pursuant to 42 U.S.C. § 1983. (Doc. 1). Along with his complaint, the Plaintiff submitted an application requesting leave to proceed in forma pauperis under 28 U.S.C. § 1915. The Prison Litigation Reform Act (the "ACT"), Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) imposed new obligations on prisoners who file suit in federal court and wish to proceed in forma pauperis under 28 U.S.C. § 1915, e.g., the full filing fee ultimately must be paid (at least in a non-habeas suit). Also, a new section was added which relates to screening complaints in prisoner actions.¹

The Complaint will now be reviewed pursuant to the screening provisions of the Act. For the reasons set forth below, the instant complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

When considering a complaint accompanied by a motion to proceed in forma pauperis, a district court may rule that process should not be issued if the complaint is malicious, presents an unquestionably meritless legal theory, or is predicated on clearly

¹Section 1915(e)(2), which was created by § 804(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 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.

baseless factual averments. Nietzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989). Unquestionably, meritless legal theories are those "in which either it is readily apparent that the plaintiff's complaint lacks an arguable basis in law or 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)). "[T]he 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). When reviewing a complaint for frivolity under § 1915 (d), the court is not bound, as it is on a motion to dismiss, "to accept without question the truth of the plaintiff's allegations." Id. at 32.

In his complaint, the Plaintiff has named Lieutenant Naperkowski, a correctional officer at the State Correctional Institute Retreat, Hunlock, Pennsylvania, as the Defendant. He alleges that Lt. Naperkowski, an alleged "32 degree European freemason", has used his position as a shield to order and aid certain individuals to commit acts of murder on Plaintiff's family members, as well as two children: Fatiman Borfeild and Khalil Robinson. (Doc. 1). Specifically, the Plaintiff alleges that Lt. Naperkowski ordered two individuals to "kidnap plaintiff's 9 yr. old daughter Fatimah Barfeild from her residence in a foster home in Lancaster, PA., and brought to S.C.I. Pittsburgh where . . . [she was] beat to death, and then threw her body in the prisons

trash compactor where she remained until U.S. Waste Disposal Company came." Id. He further alleges that he saw his daughter on the prison grounds from a window on the B side of the hospital before she was killed. Id. He alleges that the Lieutenant forced Plaintiff's family to keep "theirs and plaintiff's victimization secrete." Id.

In addition, the Plaintiff alleges that the Defendant encouraged other racist officers "who are khazariar jews, and members of the secrete society called freemasonry to harass and poison plaintiff." (Doc. 1).

Finally, in a document submitted by the Plaintiff dated September 16, 1998, (Doc. 10), he alleges "Lt. Naperkowski removed from [Plaintiff's] legal mail a hand drawn pentagram with Hebrew words written on it used for telepathic communication or mental telepathy."² (Doc. 10). The Plaintiff further claims that the "lieutenant showed this pentagram to a jew that practice (sic) witchcraft name (sic) C.O. Learn." (Doc. 10). In turn, he alleges that C.O. Learn and the Defendant used this pentagram to invade Plaintiff's mind without his consent. "By doing so they could listen to my thoughts, read my mind or communicate with me without speaking a word outloud (sic)." Id. However, the Plaintiff points

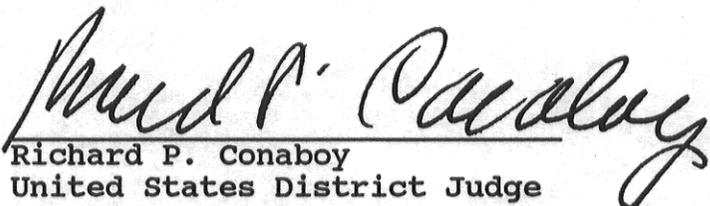
²The Plaintiff has submitted a letter by Rabbi Jonathan M. Brown, D.D., in an attempt to provide credence to the pentagram. Although the Rabbi's letter is well taken, we would note that the Rabbi himself indicates that he never used the pentagram, and that Plaintiff should "forsake any interest" in the pentagram because Plaintiff does not meet the requirements of the system. In addition, the Rabbi has indicated that the system is part of a mystical tradition that is not a part of mainstream Judaism. (Doc. 10, exhibit 1).

out that everything either person relays is "heard inside like listening to a radio broadcast." (Doc. 10).

As discussed above, 28 U.S.C. § 1915 (e)(2)(B)(i) gives the Court the "unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Denton v. Hernandez, 504 U.S. 25, 32 (1992). In Denton, the court noted that "clearly baseless" includes factual claims that are fanciful, fantastic, and delusional. Id. Furthermore, the Court added that a finding of factual frivolousness is appropriate when the "facts alleged rise to the level of the irrational or wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Id. at 33.

Here, as discussed above, the Plaintiff has alleged that Lt. Naperkowski ordered certain individuals to kidnap the Plaintiff's family members and bring them back to the prison where the Defendant aided the individuals in killing the Plaintiff's relatives and disposing their bodies into the prison trash compactor. Moreover, Plaintiff alleges that Defendant, "a 32 degree free mason", has encouraged other racist guards within the prison to harass and poison the Plaintiff. With all due respect to the Plaintiff we conclude that these allegation are incredible and that they reach the level of fanciful and delusional scenario's as contemplated by the Supreme Court in Denton. As such, We shall dismiss the Plaintiff's complaint, without prejudice, as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Under the circumstances,

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


Richard P. Conaboy
United States District Judge

DATE: 12/27/88

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

11
9/24/98
OJ

EUGENE ROBINSON, : CIVIL ACTION NO. 3:98-1345
Plaintiff : (CONABOY, J.)
v. : (DURKIN, M.J.)
LIEUTENANT. NAPERKOWSKI, :
Defendant :

FILED
SCRANTON
SEP 24 1998
PER OJ
DEPUTY CLERK

REPORT AND RECOMMENDATION

Plaintiff, an inmate at the State Correctional Institution at Pittsburgh, ("SCI-Pittsburgh"), Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983, in which he alleges that the defendant is responsible for the murders of various members of his family, including his two children. (Doc. No. 1).

On September 16, 1998, the plaintiff filed the appropriate application to proceed in forma pauperis and authorization forms. (Doc. Nos. 7 & 8). An administrative order was issued on the same day. (Doc. No. 9). Thus, the complaint will now be given preliminary consideration.

Lieutenant Naperkowski, a correctional officer at the State Correctional Institution at Retreat, ("SCI-Retreat"), is the only defendant named in this action.

The plaintiff alleges that since August of 1993, the defendant has been harassing him and has ordered the murders of the plaintiff's family members, including his two (2) children. (Doc. No. 1, p. 4). The plaintiff further alleges that the defendant has

encouraged others to harass and poison him. (Id.).

Expanding his prior allegations, the plaintiff alleges that he, as well as his sisters and brother, had children by "African American Freemasons", and that defendant Naperkowski used this knowledge to "force the plaintiff's family members into secrecy (sic)". (Doc. No. 1, p. 4A).

The plaintiff further alleges that defendant Naperkowski is a "32° European Freemason" and a member of "the satanic cult or fraternal order of freemason", who has been using other racist correctional officers to engage in criminal conduct and conspire with him to conceal the murders of the plaintiff's family members. (Id.).

The plaintiff alleges that defendant Naperkowski directed certain individuals to kidnap the plaintiff's nine-year-old daughter from her residence and bring her to SCI-Pittsburgh, where the individual proceeded to "beat her to death, and then threw her body in the prisons trash compactor where she remained until U.S. Waste Disposal Company came, and removed the trash from the institution". The plaintiff alleges that his aunt and brother were murdered in the same fashion. (Doc. No. 1, pp. 4A-4B).

The plaintiff also alleges that he is being poisoned by individuals acting under the direction of defendant Naperkowski. As a result of the poisonings, the plaintiff alleges that he has suffered physical ailments that have gone untreated by the medical staff at SCI-Pittsburgh. (Doc. No. 1, p. 4B).

Finally, the plaintiff alleges that defendant Naperkowski has interfered with his attempts to bring criminal charges against him in both the state and federal courts. (Doc. No. 1, pp. 4B-4C).

As a result of the foregoing allegations, the plaintiff requests the following relief:

1. Issue a criminal complaint, and summons against C.O. III Naperkowski on behalf of plaintiff for ordering the murders of plaintiff's family members, and two children and also for the attempted murders of plaintiff.
2. Charge C.O. III Naperkowski with a 12 count indictment on behalf of plaintiff as stated in plaintiff's cause of action.
3. Have C.O. III Naperkowski fired from his occupation as a state correctional officer, and dismissed from working as a state employee.
4. Charge Mark Drake, Michael Harris, Randy Lowe, and Saleen (a.k.a. Candyman) with the murders of plaintiff's missing family members.
5. Dismiss plaintiff (sic) state prison sentence, and forbid all freemason federal agents from coming into contact with plaintiff.
6. Dismantle all state prisons that house only freemason inmates, and have all freemason correctional officers, and administrative staff.
7. Dismantle the following state prisons that consist of all freemason staff and inmates because these environments are used to secretly engage in criminal activities. 1. SCI-Retreat, 2. SCI-Coal Township, 3. SCI-Huntingdon, 4. SCI-Smithfield, 5. SCI-Pittsburgh, 6. SCI-Greensburg, 7. SCI-Greene, 8. SCI-Chester, 9. SCI-Camp Hill."

(Doc. No. 1, Additional p. 4).

Citing to Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court held that 28 U.S.C. § 1915(d) gives the courts "the

unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless". Denton v. Hernandez, 504 U.S. 25 (1992). The Court noted that the "clearly baseless" category encompasses allegations that are fanciful, fantastic and delusional. Id. at 32-33. Moreover, the Court noted that a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts to contradict them. Id. at 33.

It is clear that the instant action can be dismissed as frivolous pursuant to the provisions of § 1915(d) as set forth in Neitzke and Denton. The plaintiff in the instant action has alleged that defendant Naperkowski has arranged for the murders of various members of his family, including his two (2) children, his brother and his aunt. Moreover, the plaintiff alleges that the defendant had these individuals kidnaped from their homes and brought to the correctional institution where the plaintiff was incarcerated, where they were beaten to death and thrown into the institution's trash compactor. To say the least, the plaintiff's claims are irrational, wholly incredible and delusional. Thus, the plaintiff's complaint should be dismissed pursuant to 28 U.S.C. § 1915(d) as frivolous.

Moreover, even if the plaintiff's action were not dismissed on the above basis, with respect to the plaintiff's request that this

court institute criminal charges against defendant Naperkowski, the provision of § 1983 that the offending person "shall be liable to the party injured in an action at law" connotes the civil remedy of damages of some kind, Basista v. Weir, 340 F.2d 74 (3d Cir. 1965), and in an appropriate case, the civil remedy of injunctive relief is available. Central Presbyterian Church v. Black Liberation Front, 303 F.Supp 894 (E.D.Mo. 1969). However, § 1983 does not provide for the criminal remedy sought in this case. Thus, the plaintiff's complaint should be dismissed as frivolous pursuant to § 1915(d) on this basis.

Finally, even if the court were to find that the plaintiff's case were not frivolous on either of the two (2) above grounds, to the extent that the plaintiff is attempting to assert a conspiracy claim against defendant Naperkowski and the other individuals alluded to in his complaint, when alleging a conspiracy, the plaintiff's allegations "must be supported by facts bearing out the existence of the conspiracy and indicating its broad objectives and the role each defendant allegedly placed in carrying out these objectives". Flanagan v. Shively, 783 F.Supp. 922 (M.D.Pa. 1992). Bare conclusory allegations of 'conspiracy' or 'concerted action' will not suffice to support a conspiracy claim. Id. at 928.

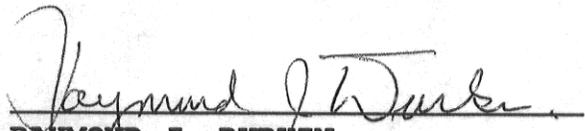
While the plaintiff alleges that defendant Naperkowski directed certain individuals to kidnap and murder members of his family and poison the plaintiff, the plaintiff has not set forth sufficient allegations to state a claim for conspiracy. Thus, to

the extent that the plaintiff may be alleging a conspiracy claim against defendant Naperkowski, the plaintiff's complaint should be dismissed.

On the basis of the foregoing,

IT IS RESPECTFULLY RECOMMENDED THAT:

- (1) the plaintiff's complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d); or in the alternative,
- (2) the plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted.


RAYMOND J. DURKIN
United States Magistrate Judge

Date: September 23, 1998