

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

Denilson P. Pereira,)	
Plaintiff,)	
)	
v.)	C.A. No. 13-513-M
)	
Chief of Police,)	
Pawtucket Police Department, et al.,)	
Defendants.)	
)	

AMENDED MEMORANDUM AND ORDER

Plaintiff Denilson P. Pereira, an inmate at the Adult Correctional Institutions in Cranston, Rhode Island, has filed *pro se* a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1.) Mr. Pereira names as Defendants: (i) John Doe, Chief of Police, Pawtucket Police Department; (ii) John Doe Two, a Pawtucket police officer; (iii) Mary Doe,¹ another Pawtucket police officer, and (iv) other Does, employees of the Pawtucket Police Department whose names will be determined through discovery. *Id.* at 2-3. Mr. Pereira contends that his treatment by Defendants during his “booking” in connection with his April 20, 2103 arrest violated his Eighth and Fourteenth Amendment rights under the U.S. Constitution. *Id.* at 1, 3, 5-6. In addition to the Complaint, Mr. Pereira has filed a Motion for Appointment of Counsel (“Counsel Motion”) (ECF No. 2) and a Motion for Leave to Proceed *In Forma Pauperis* (“IFP Motion”). (ECF No. 3.)

Because Mr. Pereira seeks to proceed *in forma pauperis*, his complaint is subject to preliminary screening under 28 U.S.C. § 1915(e)(2). Because his complaint is “a civil action in which [a] prisoner seeks redress from a governmental entity or officer or employee of a

¹ Mr. Pereira’s complaint is handwritten and it is unclear if he wrote “Many Doe” or “Mary Doe.” This defendant will be referred to as “Mary Doe” in this Memorandum and Order.

governmental entity,” his complaint also is subject to review under 28 U.S.C. § 1915A.

After reviewing Mr. Pereira’s complaint and his two pending motions, this Court finds that Mr. Pereira’s complaint survives initial review under §§ 1915(e)(2) and 1915A; his IFP Motion (ECF No. 3) is GRANTED; and his Counsel Motion (ECF No. 2) is DENIED.

I. BACKGROUND

Mr. Pereira’s complaint alleges that he was injured by members of the Pawtucket Police Department on April 20, 2013. (ECF No. 1 at 1, 3-5.) He alleges that during his “booking,” John Doe instructed him to turn and face the wall. *Id.* at 3. Mr. Pereira complied. *Id.* at 4. Then John Doe Two told Mr. Pereira to remove his shoes and give them to him, and Mr. Pereira complied. *Id.* Next John Doe Two threw the shoes at Mr. Pereira, “hitting the wall next to him.” *Id.* at 4. Mr. Pereira asked if he should hand the shoes back to him. *Id.*

Then Mary Doe told Mr. Pereira to “wipe the smirk off his face” and John Doe Two “physically attacked” Mr. Pereira “from behind smashing his face into a cement wall.” *Id.* John Doe told Mr. Pereira “you got my wall dirty,” instructed Mr. Pereira to sit, and called an ambulance. *Id.* The ambulance personnel declined to transport Mr. Pereira, so he was transported in a police car to Memorial Hospital. *Id.* Mr. Pereira received six stiches for an inch-long cut above his left eyebrow and he suffered headaches and blurred vision for three days. *Id.* at 5.

Mr. Pereira contends that Defendants caused his injuries and violated his constitutional rights under the Eighth Amendment to be free from cruel and unusual punishment. *Id.* Mr. Pereira further contends that the Pawtucket Police Chief violated his Fourteenth Amendment rights to equal protection of the law by failing to have proper training on the handling, care, and treatment of prisoners. *Id.*

II. ANALYSIS

A. Screening under §§ 1915(e)(2) and 1915A

In connection with proceedings *in forma pauperis*, 28 U.S.C. § 1915(e)(2)(B) provides for dismissal of a “case at any time if the court determines that . . . the action [] is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” Similarly, 28 U.S.C. § 1915A directs courts to screen complaints filed by prisoners against “a governmental entity or officer or employee of a governmental entity” and to dismiss such complaints, or any portions thereof, for the same reasons as those set forth in § 1915(e)(2)(B).

“The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and § 1915A is identical to the legal standard used when ruling on a Rule 12(b)(6) motion.” *Hodge v. Murphy*, 808 F.Supp.2d 405, 408 (D.R.I. 2011). When reviewing a motion filed under Rule 12(b)(6), courts “accept well-pleaded facts as true and draw all reasonable inferences from those facts in favor of the plaintiff.” *Figueroa v. Rivera*, 147 F.3d 77, 80 (1st Cir. 1998). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556.) Because Mr. Pereira appears *pro se*, his complaint is read “with an extra degree of solicitude.” *Rodi v. Ventetuolo*, 941 F.2d 22, 23 (1st Cir. 1991).

As detailed above, Mr. Pereira describes an incident during which he was in the custody of the Pawtucket Police Department, his shoes were thrown towards him, comments were made,

and his face was smashed into a wall. Reviewing Mr. Pereira's *pro se* complaint liberally, accepting his factual allegations as true, and construing all reasonable inferences in his favor, this Court finds, at this initial stage, that Mr. Pereira has stated sufficient facts for his complaint to proceed.

B. Counsel Motion

Mr. Pereira seeks appointed counsel. (ECF No. 2.) He contends that as a prisoner, he lacks the capability to prepare a proper investigation, interview witnesses, or do legal research. *Id.* at 1. However, “there is no constitutional right to appointed counsel in a civil case.” *Maroni v. Pemi–Baker Reg'l Sch. Dist.*, 346 F.3d 247, 257 (1st Cir. 2003). To obtain appointed counsel, Mr. Pereira must demonstrate that “exceptional circumstances [are] present such that a denial of counsel [is] likely to result in fundamental unfairness impinging on his due process rights.” *DesRosiers v. Moran*, 949 F.2d 15, 23 (1st Cir. 1991). To determine whether such exceptional circumstances are present, “a court must examine the total situation, focusing, *inter alia*, on the merits of the case, the complexity of the legal issues, and the litigant's ability to represent himself.” *Id.* at 24.

Evaluating these factors demonstrates that those exceptional circumstances are not present here: this case centers on one brief incident involving only a few individuals; the complaint contains two claims; and Mr. Pereira has shown a basic understanding of court procedures and the ability to express himself in writing.

C. IFP Motion

Mr. Pereira seeks to proceed *in forma pauperis*. (ECF No. 3.) He has provided this Court with an affidavit and a copy of his Inmate Account History. (ECF Nos. 3, 5.) In his IFP Motion, Mr. Pereira states he has never been employed, receives no income, and owes court

finer. (ECF No. 3 at 1-2.) Mr. Pereira receives some financial support from his mother. (ECF No. 3 at 2; ECF No. 5.) This Court finds that Mr. Pereira cannot afford to pay the cost of this litigation.

Prisoners proceeding *in forma pauperis* “shall be required to pay the full amount of the filing fee.” 28 U.S.C. § 1915(b)(1). Based on the information provided by Mr. Pereira in his Inmate Account History, his initial partial filing fee is \$10. Within 30 days from the date of this Memorandum and Order, the R.I. Department of Corrections (“RI DOC”) shall forward to the clerk of court \$10 for Mr. Pereira’s initial partial filing fee.

Section 1915(b)(2) explains that “[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account . . . each time the amount in the account exceeds \$10 until the filing fees are paid.” Therefore, after the initial partial payment and until the filing fee in the amount of \$400 is paid in full, RI DOC shall forward payments equal to 20 percent of Mr. Pereira’s preceding month’s income credited to his account when the amount in his account exceeds \$10.

III. CONCLUSION

For the reasons stated above, Mr. Pereira’s complaint survives this Court’s review under 28 U.S.C. §§ 1915(e)(2) and 1915A; Mr. Pereira’s Counsel Motion (ECF No. 2) is DENIED; and Mr. Pereira’s IFP Motion (ECF No. 3.) is GRANTED.

IT IS SO ORDERED.

/s/John J. McConnell, Jr.
John J. McConnell, Jr.
United States District Judge

August 9, 2013