

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

AARON BENBOW,)
Plaintiff,)
v.) C.A. No. 13-184-S
R.I. D.O.C. S.I.U.)
INVESTIGATOR FUGUERIDO,)
et al.,)
Defendants.)

MEMORANDUM AND ORDER

WILLIAM E. SMITH, United States District Judge.

Before this Court is a civil rights Complaint (ECF No. 1) filed by Plaintiff Aaron Benbow, pro se, an inmate at the Adult Correctional Institutions ("ACI"), Cranston, Rhode Island, pursuant to 42 U.S.C. § 1983. Benbow has also filed an Application to Proceed without Prepayment of Fees and Affidavit (ECF No. 2) ("Application"). Although Benbow has now¹ complied with the procedural requirements of 28 U.S.C. § 1915(a), the Court is required to screen the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. Having done so, the Court finds, on initial review, that the Complaint states a claim on which relief may be granted for the reasons discussed below.

¹ The Court issued an Order Directing Plaintiff to File Certified Copy of Inmate Account Statement (ECF No. 5) on May 29, 2013. The certified copy (ECF No. 6) was received by the Court on June 6, 2013.

I. Complaint

A. Law

In connection with proceedings in forma pauperis, § 1915(e)(2) instructs the Court to dismiss a case at any time if the Court determines that the action: 1) is frivolous or malicious; 2) fails to state a claim on which relief may be granted; or 3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Similarly, § 1915A directs courts to screen complaints filed by prisoners against a governmental entity, officer, or employee of such entity and dismiss the complaint, or any portion thereof, for reasons identical to those set forth in § 1915(e)(2). 28 U.S.C. § 1915A.

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2) and § 1915A is identical to the standard used when ruling on a Rule 12(b)(6) motion. See Fridman v. City of New York, 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002); see also Pelumi v. Landry, Nos. CA 08-084 ML et al., 2008 WL 2660968, at *2 (D.R.I. June 30, 2008). "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)).

B. Discussion

The Complaint names as Defendants Rhode Island Department of Corrections ("RIDOC") SIU Investigator Figuerido, Rhode Island State Police Detective Salisbury, RIDOC High Security Deputy Warden Leach, and RIDOC High Security Lieutenant Sayles (collectively, "Defendants"). Deputy Warden Leach and Lieutenant Sayles were dismissed from the Complaint on May 9, 2013, pursuant to a letter dated May 3, 2013 from Benbow to the Clerk's Office requesting their removal (ECF No. 3). Defendants are sued in both their individual and official capacities.

In brief, Benbow alleges that as part of an investigation of an incident at the ACI, Benbow was interviewed by Investigator Figuerido and Detective Salisbury. During that interview, Benbow states that, hoping to gain favor with the investigators, he provided information pertaining to a previous incident at the ACI. Benbow claims to have "given up" certain inmates allegedly involved in that incident, regardless of whether the information was true or not. He further claims that: he had no idea the information would be

in the final report; the information should not have been included; or the information should have been redacted.

According to Benbow, the information he provided was given to those inmates as part of the discovery package relating to the previous incident and, as a result, he was labeled a "snitch." He alleges that he was threatened, assaulted by another inmate (although it is unclear whether the assault was connected to Benbow's current claims), and, after the assault, moved to the same "mod" with one of the inmates he allegedly gave up.

Benbow states that both Investigator Figuerido and Detective Salisbury knew that the disclosure of the information Benbow furnished would put his safety at risk. He alleges deliberate indifference on their part and violation of his rights under the Eighth Amendment. Benbow seeks compensatory and punitive damages against them in their individual capacities as well as injunctive relief against them in their official capacities.

Reviewing Benbow's pro se Complaint liberally, Estelle v. Gamble, 429 U.S. 97, 106 (1976), accepting his factual allegations as true, Alt. Energy, Inc. v. St. Paul Fire & Marine Ins. Co., 267 F.3d 30, 33 (1st Cir. 2001), and construing all reasonable inferences in his favor, id., the Court concludes

that, at this early stage, Benbow has stated sufficient facts against Inspector Figuerido and Detective Salisbury to proceed with his Complaint.

II. Application

Benbow has submitted the affidavit required by 28 U.S.C § 1915(a)(1) and a copy of his inmate account statement, certified by an appropriate official at the ACI, as directed by § 1915(a)(2). After reviewing the documents, the Court GRANTS his Application.

Plaintiff is still required to pay the statutory filing fee of \$350 for this action, however. Pursuant to the Prison Litigation Reform Act, adopted April 25, 1996, and codified at 28 U.S.C. § 1915(b), a prisoner seeking to file in forma pauperis must pay, when funds exist, an initial filing fee of the greater of twenty percent of the average monthly deposits to his account or the average monthly balance for the six months prior to the filing of his complaint. See 28 U.S.C. § 1915(b)(1). Subsequently, a prisoner must pay monthly twenty percent of the previous month's balance in his account. See 28 U.S.C. § 1915(b)(2).

The monthly deposits to Benbow's account during the relevant period averaged \$16.41. During the same period, his

average monthly balance was \$97.73.² Therefore, Benbow is required to pay \$19.55 as an initial filing fee. The ACI is directed to forward to the Court every month twenty percent of the previous month's balance in Benbow's account each time that amount exceeds \$10 until Benbow has paid the entire filing fee of \$350. Benbow shall make his initial payment within thirty (30) days of the date of this Memorandum and Order.

III. Conclusion

Based on the foregoing, the Court finds that the instant Complaint survives initial scrutiny under §§ 1915(e) and 1915A. Accordingly, Benbow may proceed with his claims against Investigator Figuerido and Detective Salisbury.³ His Application to proceed in forma pauperis is GRANTED.

IT IS SO ORDERED.

/s/ William E. Smith

William E. Smith
United States District Judge
Date: November 13, 2013

² This amount differs from that provided by the ACI official. It appears that the official included two months subsequent to the filing of the Complaint in her calculations.

³ As noted previously, Benbow has voluntarily dismissed Deputy Warden Leach and Lieutenant Sayles from the Complaint.