

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

CHUKUMA E. AZUBUKO :
 :
 v. : CIVIL ACTION
 :
 MASSACHUSETTS STATE POLICE : NO. 04-CV-4176
 :
 :

SURRICK, J.

NOVEMBER ____, 2004

MEMORANDUM & ORDER

Presently before the Court is Plaintiff Chukuma E. Azubuko's pro se motion to proceed *in forma pauperis*, an affidavit in support, and a copy of his Complaint against Defendant Massachusetts State Police for numerous alleged violations of 42 U.S.C. § 1983.¹ (Doc. No. 1.) For the reasons discussed below, we will deny Plaintiff's motion and dismiss his Complaint.

When reviewing *in forma pauperis* petitions, the Court must make two separate determinations. First, the Court must determine whether the plaintiff is eligible for pauper status under 28 U.S.C. § 1915. Second, the Court must "screen" the complaint to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B). *Roman v. Jeffes*, 904 F.2d 192, 194 n.1 (3d Cir. 1990); *Johnson v. Sadler*, No. 04-1366, 2004 WL 792741, at *1 (E.D. Pa. Apr. 7, 2004). The determination of whether to grant or deny an *in forma pauperis* petition lies within the sound the discretion of the District Court. *Jones v. Zimmerman*, 752 F.2d 76, 78 (3d Cir. 1985). Relevant factors to consider are whether the

¹ Plaintiff resides in the Commonwealth of Massachusetts, the lawsuit is against the Massachusetts State Police, and Plaintiffs' Complaint alleges conduct that occurred in Commonwealth of Massachusetts. (Doc. No. 1.)

plaintiff is employed, his annual salary, and any other property or assets that he may possess. *Wexler v. Bell Atlantic*, No. 99-4816, 1999 U.S. Dist. LEXIS 16140, at *1-2 (E.D. Pa. Oct. 16, 1999) (citing *In re Koren*, 176 B.R. 740, 743 (E.D. Pa. 1995)). Here, Plaintiff has submitted an affidavit stating that he earns \$13,000 to \$15,000 annually as a substitute teacher, makes approximately \$1200 in additional outside income, and has \$120 in his two checking accounts. (Doc. No. 1.) We are satisfied that Plaintiff has the ability to pay the \$150 filing fee in this matter. Therefore, Plaintiff's petition to proceed *in forma pauperis* will be denied.

Even if we were to find that Plaintiff's financial circumstances were insufficient to pay the filing fee, we would be compelled to dismiss his Complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted. Although Plaintiff's factual allegations are rambling and disorganized, to the point of being nearly incoherent, he appears to allege that Defendant Massachusetts State Police violated his constitutional rights through several actions, including his arrest during a traffic stop and another arrest after a domestic incident. (Compl. at 2-9.) He seeks compensatory and punitive damages under 42 U.S.C. § 1983 and numerous state law causes of action. (*Id.* at 9.)

The standard for failure to state a claim under § 1915(e)(2)(B)(ii) is the same as that for motion to dismiss for failure to state a claim under Rule 12(b)(6). *See Shane v. Fauver*, 213 F.3d 113, 117 (3d Cir. 2000) (“[T]he most natural reading of [§ 1915(e)(2)(B)(ii)] is that it simply restates the proposition that is implicit in Rule 12(b)(6); *i.e.*, if a claim is based on facts that provide no basis for the granting of relief by the court, the claim must be dismissed.”). Thus, we must dismiss Plaintiff's complaint if “it is clear that no relief could be granted under any set of facts that could be proved consistent with [his] allegations.” *Hishon v. King & Spalding*, 467

U.S. 69, 73 (1984). Here, Plaintiff's Complaint fails to state a claim upon which we could grant relief. The Supreme Court has held that § 1983 does not apply to states or state agencies. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). In addition, the Eleventh Amendment bars actions for damages against a state and its agencies unless the state has consented to be sued in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 485 U.S. 89, 99-102 (1984); *see also Will*, 491 U.S. at 70 (stating that "governmental entities . . . are considered 'arms of the State' for Eleventh Amendment purposes"). Consequently, Plaintiff cannot recover on his § 1983 claim against Defendant, an agency of the Commonwealth of Massachusetts.² Because any attempt to amend the Complaint under Rule 15(a) would be futile, *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434-35 (3d Cir. 1997), we dismiss this action with prejudice.

Finally, even if Plaintiff had a valid claim in this matter, there would be significant problems with personal jurisdiction and venue. We can exercise personal jurisdiction over Defendant only if it is permissible under Pennsylvania law. Fed. R. Civ. P. 4(e)(1). Pennsylvania's "long-arm" statute grants personal jurisdiction "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b) (West 2002). Plaintiff's Complaint is based on allegedly tortious conduct committed by Defendant Massachusetts State Police on Plaintiff, a Massachusetts resident, in the Commonwealth of Massachusetts. (Doc. No. 1 at 2-9.) We fail to see how Defendant has sufficient minimum contacts with Pennsylvania to permit us to exercise personal jurisdiction.

² We decline to exercise supplemental jurisdiction over any of Plaintiff's remaining state law claims. 28 U.S.C. § 1367(c)(3) (2000).

See, e.g., Boone v. Thompson, No. 02-CV-1580, 2002 WL 31478834, at *4-5 (E.D. Pa. Nov. 1, 2002) (finding that U.S. District Court for the Eastern District of Pennsylvania did not have personal jurisdiction over a New Jersey state agency when there were no “continuous and systematic” contacts between the state agency and Pennsylvania); *Marshall v. Labor & Indus., State of Wash.*, 89 F. Supp. 2d 4, 8-10 (D.D.C. 2000) (holding that U.S. District Court for the District of Columbia did not have personal jurisdiction over defendant, a Washington State agency, when the allegedly illegal conduct occurred in the State of Washington). Plaintiff’s choice of venue also appears improper, as Defendant obviously does not reside in the Eastern District of Pennsylvania, nor did any of the alleged facts which give rise to Plaintiff’s claims occur here.³ 28 U.S.C. § 1391(b) (2000).

³ We note that over the past decade, Plaintiff has filed numerous frivolous complaints in various state and federal courts. *See, e.g., Azubuko v. Giorlando*, 213 F.3d 625 n.2 (2d Cir. 2000) (unpublished table decision) (listing at least other ten actions filed by Plaintiff that were dismissed as frivolous), *available at* 2000 WL 553184; *Azubuko v. Rufo*, 108 F.3d 328 (1st Cir. 1997) (unpublished table decision) (dismissing § 1983 suit against a Massachusetts sheriff as frivolous); *Azubuko v. Louisiana*, No. 04-1768, 2004 WL 2360163 (E.D. La. Oct. 19, 2004) (dismissing another § 1983 action as frivolous). He has also filed nearly twenty petitions for certiorari, extraordinary writs, or requests for rehearing with the United States Supreme Court during this time. *See, e.g., Azubuko v. Berkshire Mut. Ins. Co.*, 125 S. Ct. 202 (2004); *In re Azubuko*, 522 U.S. 306 (1997); *Azubuko v. Montgomery*, 520 U.S. 1225 (1997); *Azubuko v. Registrar of Motor Vehicles*, 520 U.S. 1225 (1997); *Azubuko v. First Nat’l Bank of Boston*, 520 U.S. 1205 (1997); *Azubuko v. Liberty Mut. Ins. Group*, 520 U.S. 1118 (1997); *Azubuko v. Bd. of Dirs., British Airways*, 520 U.S. 1118 (1997). We therefore repeat the Second Circuit’s warning to Plaintiff that “future frivolous filings may result in sanctions, which may include monetary sanctions or prohibition from further filings in this Court.” *Azubuko*, 2000 WL 553184, at *1.

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ORDER

AND NOW, this ____ day of November, 2004, upon consideration of Plaintiff's
Complaint, Motion to Proceed In Forma Pauperis, and affidavit in support (Doc. No. 1), it is
ORDERED that:

1. The Motion to Proceed In Forma Pauperis is DENIED; and
2. The Complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

BY THE COURT:

R. Barclay Surrick, Judge

