

## Caretti v. Doerr

Decided Apr 9, 2019

CIVIL ACTION NO. 4:17-CV-00268

04-09-2019

FRANCIS JOSEPH CARETTI JR., Plaintiff, v.  
THOMAS J. DOERR, et al., Defendants.

SAPORITO, M.J.

(BRANN, J.)

### REPORT AND RECOMMENDATION

The plaintiff, Francis Joseph Caretti Jr.,<sup>1</sup> filed his original *pro se* \*2 complaint on or about February 14, 2017.<sup>2</sup> He filed an amended complaint as a matter of right on or about April 21, 2017. In essence, he claims that he is entitled to an award of damages from the defendants in excess of \$78 million for their roles in his incarceration, which began in \*3 2006 after his conviction on 297 counts of possession of child pornography.

<sup>1</sup> Caretti appears to subscribe to the specious "redemptionist" theory, common among individuals in the sovereign citizen, militia, and tax protestor movements. Adherents to this "redemptionist" theory believe

that a person has a split personality: a real person and a fictional person called the "strawman." The "strawman" purportedly came into being when the United States went off the gold standard in [1933], and, instead, pledged the strawman of its citizens as collateral for the country's national debt. Redemptionists claim that government has power only over the strawman and not over the live person, who remains free.

*Monroe v. Beard*, 536 F.3d 198, 203 n.4 (3d Cir. 2008). Other hallmarks include the characterization of laws of general applicability and court rulings as "contracts" between the government and the litigant, *see, e.g., Roche v. Attorney Gen.*, 420 Fed. App'x 124, 125 n.2 (3d Cir. 2011) (per curiam), and the use of "copyrighted" personal names, *see Monroe*, 536 F.3d at 203 & n.2. Here, the plaintiff has referred to himself in the caption and body of his pleadings as two separate parties: "FRANCIS JOSEPH CARETTI JR.," which is a "registered trade name / business entity," and "Caretti, Francis Joseph Jr.," a natural person and the registered trade name holder and real party in interest in the fictional "FRANCIS JOSEPH CARETTI JR." entity. He has signed his pleadings as "Francis Joseph Caretti Jr., non-negotiable autograph[,], Private American, agent without recourse, Beneficial Owner and First Lien Holder of CARETTI FRANCIS JOSEPH JR. Estate,

d/b/a FRANCIS JOSEPH CARETTI JR.[.] in Exclusive **Equity** within a Non-Militarily Occupied **Private Estate** Without the Jurisdiction of the **United States** Under military occupation since 1933" and as "Caretti, Francis Joseph Jr., non-negotiable **autograph**[.] **Private American**; **agent** without recourse, heir and beneficiary of FRANCIS JOSEPH CARETTI JR. **Legal Estate**." He has attached **documents** in support of his **complaint** which he has signed as "Francis Joseph Jr. of the family Caretti[.] **Title holder** to 'FRANCIS JOSEPH CARETTI JR.[.]' All **Rights Reserved Without Prejudice**," and which characterize **himself** as the "**Common Law Copyright/Trade Name Copyright Holder**" of his **all-caps name**. The Court declines to participate in this exercise and has docketed this case simply as having been brought by Francis Joseph Caretti Jr., the plaintiff's real **and legal name**. The style or capitalization of his **name** in the caption of this or other **documents** is of no **legal** significance in any event, but merely identifies Caretti as the **party** bringing this action. *See Jaeger v. Dubuque Cty.*, 880 F. Supp. 640, 643-44 (N.D. Iowa 1995).

- <sup>2</sup> The original **complaint** was received by the Court and filed on February 14, 2017, but it was signed and dated on January 11, 2017. The reason for the delay is unclear from the papers, but it exceeds that typically attributable to time spent in transit in the mails.

For the reasons **stated** herein, we recommend that the action be **dismissed** as **frivolous** and for **failure** to **state** a **claim**, pursuant to 28 U.S.C. § 1915A(b) (1).

## I. BACKGROUND

At the time of **filing**, Caretti was a convicted **state** inmate incarcerated at SCI Benner Township, a **state** prison located in Centre County, Pennsylvania, where he was incarcerated pursuant

to a **state criminal** judgment. On February 28, 2006, following a jury trial, Caretti was convicted of 297 counts of felony possession of child pornography and 3 counts of misdemeanor possession of obscene materials in the Court of Common Pleas of Butler County, Pennsylvania. *Commonwealth v. Caretti*, Docket No. CP-10-CR-0000565-2005 (Butler Cty. (Pa.) C.C.P.). On May 18, 2006, he was sentenced to serve an aggregate term of nine to twenty-seven years in prison. *Commonwealth v. Caretti*, Docket No. CP-10-CR-0000565-2005 (Butler Cty. (Pa.) C.C.P.). (*See also* Doc. 8-1, at 63-65.) On October 19, 2017, the Superior Court of Pennsylvania affirmed Caretti's conviction and sentence in part and reversed it in part. <sup>4</sup> *Commonwealth v. Caretti*, 943 A.2d 309 (Pa. Super. Ct. 2007) (table decision). Caretti sought discretionary review by the Pennsylvania Supreme Court, which denied allocatur on May 30, 2008. *Commonwealth v. Caretti*, 952 A.2d 674 (Pa. 2007) (table decision). On September 12, 2008, the trial court reaffirmed and re-imposed its prior sentence in its entirety on **remand**. *Commonwealth v. Caretti*, Docket No. CP-10-CR-0000565-2005 (Butler Cty. (Pa.) C.C.P.).

Caretti filed his original **complaint** in this **matter** on or about February 14, 2017. (Doc. 1.) He filed an **amended complaint** as a **matter** of right on or about April 21, 2017. (Doc. 8.) The **amended complaint** **names** four defendants: (1) The Commonwealth of Pennsylvania; (2) the Butler County Court of Common Pleas; (3) Thomas J. Doerr, the President **Judge** of the Butler County Court of Common Pleas, in his **personal capacity** only;<sup>3</sup> and (4) Richard A. Goldinger, the **District Attorney** for Butler County, in his **personal capacity** only.<sup>4</sup> Generally, <sup>5</sup> Caretti appears to **claim** that the **state** court lacked jurisdiction to prosecute him, and that the **individual** defendants are liable for damages pursuant to a **contractual** agreement of a sort. For **relief**, the plaintiff appears to seek injunctive **relief**—his release from incarceration—and an award of \$78 million in damages.

3 We note that **Judge** Doerr does not appear to have presided over Caretti's trial or post-conviction proceedings. He appears to have been **named** by the plaintiff based solely on his role as the titular head of the county court of common pleas.

4 We note that there is nothing in the **complaint** or the **publicly** available **state** court dockets to suggest that Attorney Goldinger played any direct role in Caretti's prosecution. He too appears to have been **named** by the plaintiff based on his role as the titular head of the county **district** attorney's office.

## II. LEGAL STANDARD

Under 28 U.S.C. § 1915A, the Court is obligated to screen a **civil complaint** in which a prisoner is seeking redress from a **governmental** entity or an officer or **employee** of a **governmental** entity. 28 U.S.C. § 1915A(a); *James v. Pa. Dep't of Corr.*, 230 Fed. App'x 195, 197 (3d Cir. 2007). The Court **must dismiss** the **complaint** if it is "**frivolous**" or "fails to **state** a **claim** upon which **relief** may be granted." 28 U.S.C. § 1915A(b)(1). *See generally* *Banks v. Cty. of Allegheny*, 568 F. Supp. 2d 579, 587-89 (W.D. Pa. 2008) (summarizing prisoner litigation screening procedures and **standards**).

6 An action is "**frivolous** where it lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* *Thomas v. Barker*, 371 F. Supp. 2d 636, 639 (M.D. Pa. 2005). To determine whether it is **frivolous**, a court **must** assess a **complaint** "from an objective standpoint in order to determine whether the **claim** is based on an indisputably **meritless legal theory** or clearly baseless factual contention." *Deutsch v. United States*, 67 F.3d 1080, 1086 (3d Cir. 1995) (citing *Denton v. Hernandez*, 504 U.S. 25, 34 (1992)); *Thomas*, 371 F. Supp. 2d at 639. Factual allegations are "clearly baseless" if they are "fanciful," "fantastic," or "delusional." *See Denton*, 504 U.S. at 32-33. "[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 available to contradict them." *Id.* at 33. A **district** court is further permitted, in its sound discretion, to **dismiss** a **claim** "if it determines that the **claim** is of little or no weight, value, or importance, not worthy of serious consideration, or trivial." *Deutsch*, 67 F.3d at 1089.

The **legal standard** for **dismissing** a **complaint** for **failure** to **state** a **claim** under § 1915A(b)(1) is the same as that for **dismissing** a **complaint** pursuant to **Rule 12(b)(6) of the Federal Rules of Civil Procedure**. *Brodzki v. Tribune Co.*, 481 Fed. App'x 705, 706 (3d Cir. 2012) (per curiam); \*7 *Mitchell v. Dodrill*, 696 F. Supp. 2d 454, 471 (M.D. Pa. 2010); *Banks*, 568 F. Supp. 2d at 588. "Under **Rule 12(b)(6)**, a motion to **dismiss** may be granted only if, accepting all well-pleaded allegations in the **complaint** as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiff's **claims** lack facial plausibility." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)). In deciding the motion, the Court may consider the facts **alleged** on the face of the **complaint**, as well as "**documents** incorporated into the **complaint** by reference, and **matters** of which a court may take judicial **notice**." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Although the Court **must** accept the fact allegations in the **complaint** as true, it is not compelled to accept "**unsupported conclusions** and unwarranted inferences, or a **legal conclusion** couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). Nor is it required to credit factual allegations contradicted by indisputably authentic **documents** on which the **complaint** relies or **matters** of **public** record of which we may take judicial **notice**. *In re Washington Mut. Inc.*, 741 Fed. App'x 88, 91 n.3

8 (3d Cir. Sept. 25, 2018); \*8 *Sourovelis v. City of Philadelphia*, 246 F. Supp. 3d 1058, 1075 (E.D. Pa. 2017); *Banks*, 568 F. Supp. 2d at 588-89.

### III. DISCUSSION

It is clear from the plaintiff's **pleadings** that he is an adherent

to the **belief** that even though he was born and resides in the **United States**, he is his own **sovereign** and is therefore not a **United States citizen**. This **belief** is the hallmark of the **sovereign citizen** movement. So-called **sovereign citizens** believe that they are not subject to **government authority** and employ various tactics in an attempt to, among other things, avoid paying **taxes**, extinguish debts, and derail **criminal** proceedings.

*Gravatt v. United States*, 100 Fed. Cl. 279, 282 (2011) (footnote omitted). *See generally* Charles E. Loeser, *From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat*, 93 N.C. L. Rev. 1106, 1120-29 (2015) (describing the common **beliefs** and tactics of **sovereign citizens**).

The tactic adopted by Caretti here was the preparation of a **document** styled as a **Criminal Complaint & Affidavit of Obligation for Claim Upon Public Hazard Bonds Demand for Release** ("Affidavit of Obligation"), dated September 6, 2016, by which Caretti purported to advise Judge Doerr and Attorney Goldinger that he was a **sovereign "living man"** ("Francis Joseph Caretti Jr.") distinct from the "*nom de guerre*" defendant ("FRANCIS JOSEPH CARETTI JR.") subject to

9 \*9 **criminal** proceedings, and that he was therefore not subject to the jurisdiction of the **state** court. The **Affidavit** of Obligation further provided that, unless they provided a "point-for-point response sworn under full commercial liability, with supporting evidence attached," the **individual** defendants' **failure** to respond would constitute

silent assent to a **contract** under which they would be liable to Caretti for **contractual** damages in excess of \$78 million.<sup>5</sup>

<sup>5</sup> In support, the **Affidavit** of Obligation provided an itemized list of the various components to this **demand** for damages. Caretti sought \$10,000 for each of 34 enumerated violations of **federal criminal** law pursuant to 18 U.S.C. § 241 (\$340,000), plus \$300,000 in compensatory damages for each of twelve years of **unlawful** incarceration (\$3.6 million), plus \$1.2 million in punitive damages for each of twelve years of **unlawful** incarceration (\$14.4 million), plus \$5 million in damages for each of twelve years of tortious false imprisonment (\$60 million).

#### A. Injunctive Relief

One form of **relief** requested by the plaintiff in his **complaint** is his immediate release from prison. But this form of injunctive **relief** is simply not cognizable in a **federal civil rights** action. *See Heck v. Humphrey*, 512 U.S. 477, 481 (1994) ("[H]abeas **corpus** is the exclusive remedy for a **state** prisoner who **challenges** the fact or duration of his confinement and seeks immediate or speedier release . . . .") (citing \*10 *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973)); *Thomas v. Morganelli*, **Civil** Action No. 16-2161, 2016 WL 7116011, at \*5 (E.D. Pa. Dec. 7, 2016) (finding **federal district** court lacked jurisdiction to invalidate plaintiff's **state** conviction because "a **federal** court may not 'compel a **state** court to exercise a jurisdiction **entrusted** to it' or 'review a decision of a **state** tribunal'" (quoting *In re Grand Jury Proceedings*, 654 F.2d 268, 278 (3d Cir. 1981)). Requesting such **relief** in a non-**habeas** **civil** action is clearly **frivolous**. *See Mundy v. City of Philadelphia*, **Civil** Action No. 13-5045, 2013 WL 4766542, at \*1 (E.D. Pa. Sept. 4, 2013).

Accordingly, it is recommended that the plaintiff's **claim** for injunctive **relief** be **dismissed** as **legally frivolous** pursuant to 28 U.S.C. § 1915A(b)(1).

## B. Damages **Claims** Against the Commonwealth Entities

The **first** two defendants **named** by the plaintiff are the Commonwealth of Pennsylvania and the Butler County Court of Common Pleas. But the Commonwealth and all courts in Pennsylvania's unified judicial system are **entitled** to Eleventh Amendment **immunity** from suit. *See Haybarger v. Lawrence Cty. Adult Probation & Parole*, 551 F.3d 193, 198 (3d Cir. 2008). In light of this clear and absolute **immunity** \*11 defense, any **claims** against the Commonwealth or the **state** trial court are clearly based on an indisputably **meritless legal theory** and thus should be **dismissed** as **legally frivolous**. *See Neitzke*, 490 U.S. at 327 (noting that **claims** against defendants who are clearly **immune** from suit are "based on an indisputably **meritless legal theory**"); *McKinney v. Oklahoma*, 925 F.2d 363, 365 (10th Cir. 1991) (affirming **dismissal** for **frivolousness** of **claims** barred by the Eleventh Amendment); *Pinkney v. Commonwealth*, No. CIV. A. 93-1292, 1993 WL 120338, at \*1 (E.D. Pa. Apr. 16, 1993) (**dismissing claims** against the Commonwealth of Pennsylvania as **frivolous**).

Accordingly, it is recommended that all **claims** against the Commonwealth of Pennsylvania and the Butler County Court of Common Pleas be **dismissed** as **legally frivolous** pursuant to 28 U.S.C. § 1915A(b)(1).

## C. Federal Damages **Claims** Against Individual Defendants

In his **amended complaint**, the plaintiff expressly **disclaims** any **federal** question jurisdiction based on 42 U.S.C. § 1983 or other **civil rights** statutes. (See Doc. 8, at 2 ("This **complaint** does not fit within the scope of the **DISTRICT COURT**'s form for **civil rights** violations as the \*12 Complainant is not [a] **statutory citizen**, and I am not **claiming** jurisdiction under such **statutes**."))<sup>6</sup> If accepted on such terms, we—or any other **federal district** court—would lack subject **matter** jurisdiction altogether over this action, making **dismissal** necessary. *See*

*Shorb v. Josephine Cty. Cir. Ct.*, Civ. No. 1:17-cv-00449-AA, 2017 WL 4553410, at \*3 (D. Or. Oct. 11, 2017) (finding no subject **matter** jurisdiction where **diversity** was lacking and **pro se** plaintiff **disclaimed federal** question jurisdiction using identical words).

<sup>6</sup> We note that the original **complaint** expressly referenced 42 U.S.C. §§ 1983 and 1985(3) as the basis for his **claims**, and 28 U.S.C. § 1343(a)(3) as the basis for our exercise of jurisdiction.

But as a **pro se** litigant, we are obliged to liberally construe Caretti's **amended complaint** and consider whether he has **stated** a colorable **claim** under 42 U.S.C. § 1983, the appropriate **statute** for remedy of **civil rights** by **state** actors. *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-46 (3d Cir. 2013) (discussing a court's obligation to liberally construe **pro se** **pleadings** and other submissions, particularly when dealing with imprisoned **pro se** litigants). "A **party** does not need to plead specific **legal theories** in the **complaint**, as long as the opposing **party** receives **notice** as to what is at issue in the **lawsuit**." *Elec. Constr. & Maint. Co., Inc. v. Maeda Pac. Corp.*, 764 F.2d 619, 622 (9th Cir. 1985); *accord Small v. Chao*, 398 F.3d 894, 898 (7th Cir. 2005); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, **Civil Action No. 2:06-cv-1797**, 2014 WL 982848, at \*7 n.11 (E.D. Pa. Mar. 13, 2014) (quoting *Maeda Pac. Corp.*). Further, the review of a **pro se** **complaint** focuses on whether the facts **alleged** state a **claim** under **any legal theory**, not just those explicitly **named** in the **complaint**. *Small*, 398 F.3d at 898; *Ohuche v. Merck & Co., Inc.*, 903 F. Supp. 2d 143, 150 (S.D.N.Y. 2012); *Thiel v. Nelson*, 422 F. Supp. 2d 1024, 1028 (W.D. Wis. 2006).

The gist of Caretti's **complaint** is that he was convicted and sentenced by a **state** court that lacked **personal** jurisdiction over him, which we construe as a **claim** that he was **deprived** of his

14 **federal** due process **rights**, made actionable under 42 U.S.C. § 1983.<sup>7</sup> Section 1983 \*14 provides in pertinent part:

7 We note that, in addition to § 1983, the plaintiff's original **complaint** referenced 42 U.S.C. § 1985(3). We have declined to construe his **amended complaint** to include a § 1985(3) **claim**, however, because Caretti has failed to plead any wrongful conduct by the defendants that was **allegedly** motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus," a necessary element to establish a § 1985(3) **claim**. See *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 835 (1983); *Bell v. City of Milwaukee*, 746 F.2d 1205, 1233 (7th Cir. 1984), **overruled** on other grounds by *Russ v. Watts*, 414 F.3d 783 (7th Cir. 2005). We further note that the **Affidavit** of Obligation, upon which Caretti's **contractual claims** against Judge Doerr and Attorney Goldinger rest, bases its **claim** for liquidated damages in part on 34 violations of 18 U.S.C. § 241. But it is well established that this **federal criminal statute** does not give rise to a **private** cause of action. See *Abou-Hussein v. Gates*, 657 F. Supp. 2d 77, 81 (D.D.C. 2009), *aff'd*, 2010 WL 2574084 (D.C. Cir. June 11, 2010) (per curiam); *Shahin v. Darling*, 606 F. Supp. 2d 525, 538 (D. Del. 2009), *aff'd*, 350 Fed. App'x 605 (3d Cir. 2009) (per curiam); *Figueroa v. Clark*, 810 F. Supp. 613, 615 (E.D. Pa. 1992); *Dugar v. Coughlin*, 613 F. Supp. 849, 852 n.1 (S.D.N.Y. 1985); *Brunwasser v. Strassburger*, 490 F. Supp. 959, 964 (W.D. Pa. 1980).

Every person who, under color of any **statute**, ordinance, regulation, custom, or usage, of any **State** or Territory or the **District** of Columbia, subjects, or causes to be subjected, any **citizen** of the **United States** or other person within the jurisdiction thereof to the deprivation of any **rights**, privileges, or immunities **secured** by the **Constitution** and **laws**, shall be liable to the **party** injured in an action at law, suit in **equity**, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. Section 1983 does not create **substantive rights**, but instead provides remedies for **rights** established elsewhere. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). To establish a § 1983 **claim**, a plaintiff **must** establish that the defendants, acting under color of **state** law, **deprived** the plaintiff of a right **secured** by the **United States Constitution**. *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995). To avoid **dismissal** for **failure to state a claim**, a **civil rights** \*15 **complaint must state** the conduct, time, place, and persons responsible for the **alleged civil rights** violations. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005).

Here, the **complaint names** two **individual** defendants—**Judge** Doerr and Attorney Goldinger. Both appear to be **named** solely in their roles as titular heads of the county court of common pleas and the county **district** attorney's office, respectively. Neither is **alleged** to have had any direct role in the prosecution or adjudication of Caretti's **criminal** case.

It is well-established that "[c]ivil **rights claims** cannot be premised on a **theory** of *respondeat superior*. Rather, each **named** defendant **must** be shown . . . to have been **personally** involved in the events or occurrences which underlie a **claim**." *Millbrook v. United States*, 8 F. Supp. 3d 601, 613 (M.D. Pa. 2014) (citation omitted). "A defendant in a **civil rights** action **must** have **personal** involvement in the **alleged** wrongs to be liable,

17 and cannot be held responsible for a constitutional violation which he or she neither participated in nor approved." *Baraka v. McGreevey*, 481 F.3d 187, 210 (3d Cir. 2007). Typically, personal involvement may be established through: (1) personal direction or actual participation by the defendant in the misconduct; or (2) knowledge of  
 16 and \*16 acquiescence in the misconduct. *Id.* As previously explained by the Third Circuit:

A defendant in a civil rights action must have personal involvement in the alleged wrongs . . . . [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

*Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). The complaint makes no such allegations with respect to either Judge Doerr or Attorney Goldinger, and the public record of Caretti's criminal case reveals that Judge Doerr did not preside over the case and Attorney Goldinger did not prosecute it.

Alternatively, § 1983 liability may result if a supervising defendant caused a subordinate to violate another's constitutional rights through the execution of an official policy or settled informal custom. *See Sample v. Diecks*, 885 F.2d 1099, 1117-18 (3d Cir. 1989).

[T]o hold a supervisor liable because his policies or practices led to [a constitutional] violation, the plaintiff must identify a specific policy or practice that the supervisor failed to employ and show that: (1) the existing policy or practice created an unreasonable risk of the [constitutional] injury; (2) the supervisor was aware that the unreasonable risk was created; (3) the supervisor was indifferent to that risk; and (4) the injury

\*17

resulted from the policy or practice.

*Beers-Capitol v. Whetzel*, 256 F.3d 120, 134 (3d Cir. 2001) (citing *Sample*, 885 F.2d at 1118). But the complaint here fails to allege the existence of a policy, practice, or custom of any sort that caused Caretti's alleged constitutional injury.

Accordingly, it is recommended that the plaintiff's federal civil rights claims against Judge Doerr and Attorney Goldinger be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). It is further recommended that, based on the allegations of the amended complaint, these claims be dismissed without leave to amend as any further amendment is clearly futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

#### **D. State Law Claims Against Individual Defendants**

What remains, then, is a simple—and fundamentally flawed—breach of contract claim against the individual defendants in their personal capacities.

Fundamentally, Caretti's claim is a state-law claim for breach of contract. He claims that state authorities have no authority to incarcerate him because he is a natural person or sovereign citizen,  
 18 \*18 distinct from "FRANCIS JOSEPH CARETTI JR.," the *nom de guerre* defendant named in the state criminal judgment, and thus not subject to the laws of the Commonwealth of Pennsylvania—

a patently frivolous claim. *See Yun v. New Jersey*, Civ. No. 18-cv-1804 (KM) (SCM), 2019 WL 913155, at \*5 (D.N.J. Feb. 22, 2019);

*Commonwealth v. Williams*, No. 2089 EDA 2014, 2015 WL 6458000, at \*4 (Pa. Super. Ct. Oct. 7, 2015).<sup>8</sup> In September 2016, after a decade of

19 incarceration, he claims to have \*19 unilaterally contracted with Judge Doerr and Attorney Goldinger by means of an Affidavit of Obligation, which states that the defendants' failure to respond to it will be construed as consent, a process

purportedly authorized by the **common law** of **equity** or some collection of pre-1933 **federal statutes**—the ultimate basis for the plaintiff's **legal theories** is not altogether clear—a **claim** that is "simply incorrect as a **matter** of black-letter **contract** law." *Smithson v. York Cty. Court of Common Pleas*, **Civil Action No. 1:15-cv-01794**, 2016 WL 4521854, at \*4 (M.D. Pa. Aug. 3, 2016), *report and recommendation adopted by* 2016 WL 4523985 (M.D. Pa. Aug. 29, 2016); *Brown v. Aponte*, **Civil Action No. 06-2096**, 2006 WL 2869524, at \*4 (E.D. Pa. Oct. 3, 2006).

<sup>8</sup> For example, among other purported sources of **authority** cited by the plaintiff, we note that he references the *Clearfield* doctrine, mischaracterizing it as a **common law** doctrine **holding** that **statutes** can only be enforced by **contract**, upon which he has based his **claim** that the **state** court lacked jurisdiction over him because he never entered into a **contract** subjecting **himself** to the **state** court's jurisdiction. This assertion is simply incorrect as a **matter** of law. In *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943), the Supreme Court **held** that "[t]he **rights** and duties of the **United States** on commercial paper which it issues are governed by **federal** rather than **[state]** law." *Id.* at 366. The *Clearfield* doctrine is simply inapplicable in the circumstances presented here, as Caretti's **criminal** proceedings had nothing whatsoever to do with commercial paper—*e.g.*, a check or bank **draft**—or the **United States** as a **party**. See *Yun v. Pennsylvania*, **Civil** No. 3:18-CV-01248, 2018 WL 3717213, at \*6 (M.D. Pa. June 27, 2018), *report and recommendation adopted by* 2018 WL 3715722 (M.D. Pa. Aug. 3, 2018). Moreover, the **state** court's exercise of jurisdiction was not dependent upon the plaintiff's **consent** to a **contract** of any sort. It was based on his commission of **criminal** acts within the borders of Butler County. See *Washington v. Sobina*, 475 F.3d 162, 165 (3d Cir. 2007) (*per curiam*); *Commonwealth v. McNeil*, 665 A.2d 1247,

1251 (Pa. Super. Ct. 1995). This jurisdictional argument, upon which this entire action is founded, is **legally frivolous**.

Based on the **amended complaint** and its attachments, neither of the **individual** defendants signed the purported **contract** or otherwise responded to it. Under Pennsylvania law, "[t]o be a **contract**, the offer **must** be accepted. An offeree has a right to make no reply to offers, and his silence and inaction cannot be construed as an assent to the offer." *In re Baum's Estate*, 117 A. 684, 685 (Pa. 1922); *see also Smithson*, 2016 WL 5421854, at \*5 (citing *Baum's Estate*); *Cohen v. Johnson*, 91 F. Supp. 231, 236 (M.D. Pa. 1950)

20 (same). \*20

To form an enforceable **contract**, both parties **must manifest** an intention to be bound by its terms. The "decisive inquiry in **contract** formation is the '**manifestation** of assent of the parties to the terms of the promise and to the consideration paid for it.'" Silence will not constitute acceptance of an offer in the absence of a duty to speak. Merely sending an unsolicited offer does not impose upon the **party** receiving it any duty to speak or deprive the **party** of its privilege of remaining silent without accepting.

*Smithson*, 2016 WL 5421854, at \*5 (quoting *Brown*, 2006 WL 28869524, at \*3). Caretti's **unilateral** attempt to impose a **contractual** obligation did not create a duty on the part of these defendants to respond, and their mere silence, in the absence of any intent by them to be bound, could not create a valid **contract**. Indeed, it is clear that Caretti's **claim** is based on an indisputably **meritless legal theory**, and thus it is **legally frivolous**.

#### IV. PLRA "THREE STRIKES" WARNING

The plaintiff is hereby notified that a prisoner may not bring a **civil** action or **appeal** a **civil** judgment under 28 U.S.C. § 1915,

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or **appeal** in a court of the **United States** that was **dismissed** on the grounds that it is **frivolous**, malicious, or fails to **state** a **claim** upon which **relief** may be granted, unless the prisoner is under imminent danger of serious physical injury.

21 28 U.S.C. § 1915(g). \*21

If this recommended disposition is adopted by the presiding **United States District Judge**, the **dismissal** of this action as **frivolous** and for **failure** to **state** a **claim** pursuant to 28 U.S.C. § 1915A(b) (1) will constitute a "strike" under 28 U.S.C. § 1915(g), and the accumulation of additional strikes may bar the plaintiff from proceeding *in forma pauperis* in later cases absent a showing of imminent danger. See generally *Byrd v. Shannon*, 715 F.3d 117, 126 (3d Cir. 2013) (articulating Third Circuit **standard** for application of § 1915(g) "three strikes" **rule**).

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## V. RECOMMENDATION

Based on the foregoing, it is recommended that:

1. The plaintiff's **amended complaint** (Doc. 8) be **DISMISSED** as **frivolous** and for **failure** to **state** a **claim** upon which **relief** can be granted, pursuant to 28 U.S.C. § 1915A(b)(1); and

2. The **Clerk** be directed to **CLOSE** this case.  
Dated: April 9, 2019

*s/Joseph F. Saporito, Jr.*

JOSEPH F. SAPORITO, JR.

22 **United States Magistrate Judge** \*22 **NOTICE**

**NOTICE** IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated April 9, 2019. Any **party**

may obtain a review of the Report and Recommendation pursuant to Local **Rule** 72.3, which provides:

Any **party** may object to a **magistrate judge's** proposed findings, recommendations or report addressing a motion or **matter** described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a **habeas corpus** petition within fourteen (14) days after being served with a copy thereof. Such **party** shall file with the **clerk** of court, and serve on the **magistrate judge** and all parties, **written objections** which shall specifically identify the portions of the proposed findings, recommendations or report to which **objection** is made and the basis for such **objections**. The briefing requirements set forth in Local **Rule** 72.2 shall apply. A **judge** shall make a de novo **determination** of those portions of the report or specified proposed findings or recommendations to which

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**objection** is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the **magistrate judge**. The **judge**, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the **magistrate judge**, making his or her own **determination** on the basis of that record. The **judge** may also receive further evidence, recall witnesses or recommit the **matter** to the **magistrate judge** with instructions.

**Failure** to file timely **objections** to the foregoing Report and Recommendation may constitute a waiver of any appellate **rights**. Dated: April 9, 2019

*s/Joseph F. Saporito, Jr.*

**JOSEPH S. APORITO, JR.**  
U.S. District Judge

 casetext