UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RAYMOND JONES, Plaintiff	)	CIVIL ACTION NO. 4:21-CV-0336
	)	(MANNION, D.J.)
v.	)	
	)	(ARBUCKLE, M.J.)
WILLIAM A. BEHE, Defendant	)	

REPORT AND RECOMMENDATION

I. INTRODUCTION

Raymond Jones believes that Assistant United States Attorney (AUSA) William Behe withheld evidence from him during his criminal trial. To correct this alleged wrong, Mr. Jones filed a Complaint asking the Court to issue a writ of mandamus to order ASUA Behe to produce the withheld exculpatory evidence. However, Mr. Jones' mandamus request is an extraordinary remedy and is only given when there are no other adequate means of relief. And while the habeas statute includes formattable hurdles that petitioners must clear, it does not mean petitioners like Mr. Jones do not have other adequate means of challenging their conviction. Therefore, mandamus is an inappropriate remedy for Mr. Jones.

Because Mr. Jones is proceeding *in forma pauperis*, the Court is required to screen the Complaint and must dismiss any action that is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). Because Mr.

Jones fails to state a claim upon relief can be granted, his Complaint is legally insufficient. I further conclude that giving Mr. Jones leave to amend his Complaint would be futile.

Therefore, it is RECOMMENDED that:

(1) Mr. Jones' Complaint (Doc. 1) should be DISMISSED for failure to state a claim upon relief can be granted.
(2) The Clerk of Court be DIRECTED to CLOSE this case.

II. LEGAL STANDARD FOR REVIEWING COMPLAINTS BY LITIGANTS PROCEEDING IN FORMA PAUPERIS

This Court has a statutory obligation to conduct a preliminary review of *pro se* complaints brought by litigants given leave to proceed *in forma pauperis*. Specifically, the Court is obliged to review the complaint in accordance with 28 U.S.C. § 1915(e)(2), which provides, in pertinent part:

> (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.

In performing this mandatory screening function, the Court applies the same standard that is used to evaluate motions to dismiss under Rule 12(b)(6) of the

Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The United States Court of Appeals for the Third Circuit has observed the evolving standards governing pleading practice in the federal courts, stating that "pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss." *Fowler v. UPMC Shadyside,* 578 F.3d 203, 209-10 (3d Cir. 2009). "[A] complaint must do more than allege the plaintiff's entitlement to relief." *Id.* at 211. It also "has to 'show' such an entitlement with its facts." *Id.*

To test the sufficiency of the complaint under Rule 12(b)(6), the court must conduct the following three-step inquiry:

> First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.

Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010) (cleaned up).

A complaint filed by a *pro se* litigant is to be liberally construed and '"however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (*quoting Estelle v. Gamble,* 429 U.S. 97, 106 (1976)). Nevertheless, "*pro se* litigants still must

allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013). Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* complaint must recite factual allegations that are enough to raise the Plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action.

III. BACKGROUND AND PROCEDURAL HISTORY

In a May 2010 controlled buy operation, the Drug Enforcement Agency and the Dauphin County Police enlisted a confidential informant to purchase drugs from Jonathan Moore with traceable currency. (Doc. 1, ¶ 3). Mr. Moore then used some of that currency to buy crack cocaine from Raymond Jones. (*Id.*). Thereafter, the Dauphin County Police executed a search warrant on Mr. Jones' car. (*Id.*). The government seized $262 in paper currency, a Blackberry cellular phone, and "misc. papers." (*Id.* at ¶ 2). That paper money was then used as evidence in Mr. Moore's federal criminal trial. (*Id.* at ¶ 3). Mr. Jones was convicted for various drug charges and the Court's judgment was imposed on September 20, 2011.[1] Judgment in a

[1] Ruling on Motions to dismiss, the court generally relies only on the complaint, attached exhibits, and matters of public record. *Sands v. McCormick*, 502 F.3d 263, 268 (3d Cir. 2007). Because the standards for dismissal for failing to state a claim under 28 U.S.C. § 1915(e) are the same as under a 12(b)(6) motion, the court may consider matters of which it may take judicial notice under 28 U.S.C. §§ 1915(e) and 1915A and under 42 U.S.C. § 1997e(c)." *Banks v. Cty. of Allegheny*, 568 F. Supp. 2d 579, 588 (W.D. Pa. 2008) (citing *Oshiver v. Levin, Fishbein, Sedran & Berman*,

Criminal Case, *United States v. Jones*, No. 1:10-CR-181 (M.D. Pa. Sept. 20, 2011), ECF No. 129. He appealed to the Third Circuit, who upheld the conviction on November 23, 2012. *United States v. Jones*, 503 F. App'x 155 (3d Cir. 2012). Mr. Jones also filed a habeas petition under 28 U.S.C. § 2255, but Judge Caldwell rejected the petition because it was time-barred. Order Denying Section 2255 Relief, *United States v. Jones*, No. 1:10-CR-181 (M.D. Pa. Oct. 22, 2014), ECF No. 159. On February 15, 2017, Mr. Jones filed a mandamus petition directed at Mr. Behe. *Id.* at ECF No. 189. In it, he claims that a DEA agent intentionally lied to the jury, and Mr. Behe knew it, and failed to correct it. *Id.* at 2. Judge Caldwell denied his writ, writing that "[Mr. Jones] has not carried his burden to show that has a clear and indisputable right to a writ of mandamus." *Id.* at 4.

In the present action, on February 23, 2021, Mr. Moore filed a "Expedited Petition for Writ of Mandamus" with the Court. (Doc. 1). The crux of the Complaint is that Mr. Jones believes that Mr. Behe unlawfully obtained a conviction by:

- Failing to disclose exculpatory evidence, namely the tracked currency, (*Id.* at ¶ 1),
- Using the items seized in Mr. Jones' car as evidence at his trial, even though he knew it was the fruit of an unlawful seizure because "none of the items were listed within the warrant to be searched for and seized as required by Pa. R. Crim. P. Rule 2006(c)," (*Id.* at ¶ 2),

38 F.3d 1380, 1385 n. 2 (3d Cir. 1994)). Therefore, I take judicial notice of the federal criminal dockets associated with Plaintiff's civil case.

- That a DEA special agent did not photocopy the traceable currency and attach it to a DEA-6 report, and if the photocopy does exist, Mr. Behe did not produce the photocopy at trial, (*Id.* at ¶ 4-5),

- That the tracked bills were held up to the jury in an envelope, but the jury should have seen the money itself, per the best evidence rule, Fed. R. Evid. 1002, (*Id.* at ¶ 6), and

- Mr. Behe made inflammatory remarks about Mr. Jones' possession of the traceable currency to obtain a "wrongful conviction without ever producing any evidence seized from Jones' vehicle. (*Id.* at ¶ 8).

Mr. Jones contends these actions are in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). (*Id.* at ¶¶ 11-12). As a remedy, he argues he is entitled to a writ of mandamus because he has no other available remedies to him, as the Third Circuit upheld his conviction. (*Id.* at ¶¶ 14-16). He also argues that a habeas petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 would not satisfy his needs. (*Id.*). So, through mandamus, Mr. Jones asks that the court "compel[] WILLIAM A. BEHE to correct his Brady violation" and to "[a]ward RAYMOND JAMES the costs of this suit." (*Id.* at p. 10).

III. ANALYSIS

A district court may issue a writ of mandamus "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Mandamus is an exceptional remedy that can only be granted if a plaintiff has exhausted all other remedies. *Temple Univ. Hosp. v. Sec'y Health and Human Servs.*, 2 F.4th 121, 132 (3d Cir. 2021). To qualify for mandamus

relief, a petitioner must show three elements: "(1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." *Id.* (citing 33 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Judicial Review § 8312 (2d ed. Apr. 2021 update)). These elements are jurisdictional. *Id.*

Federal prisoners challenging their convictions must generally do so through a 28 U.S.C. § 2255 habeas motion. *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002) (citing *Davis v. United States*, 417 U.S. 333 (1974)). A writ of mandamus cannot be used in lieu of filing a habeas petition under Section 2255. *See In re McCusker*, 697 F. App'x 129, 130 (3d Cir. 2017); *Mote v. Sempa*, 804 F. App'x 191, 192-93 (3d Cir. 2020) ("[Petitioner] cannot show that he has no other adequate means for raising his claim, because the proper avenue for presenting a collateral challenge to a federal conviction or sentence is a § 2255 motion."). This requirement is unforgiving, and petitioners cannot file a writ of mandamus even if he was previously denied habeas relief, or had a difficult time pursuing a successive habeas motion. *In re Spann*, 403 F. App'x 741, 744 (3d Cir. 2010).

Here, Plaintiff claims that filing a 28 U.S.C. § 2255 or a 28 U.S.C. § 2241[2] motion would be inadequate to address his needs. He argues that if he files a Section

[2] If the remedy provided in 28 U.S.C. § 2255 is "inadequate or ineffective," a petitioner may resort to Section 2255's "safety-valve provision," and petition the

2255 motion, "he will be limited to claims that his conviction or sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or is otherwise subject to collateral attack . . . ." (Doc. 1 at ¶ 6) (citing 28 U.S.C. § 2255(a)). He further argues that if he files a Section 2241 motion, he will be limited to claims "that he is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* (citing 28 U.S.C. § 2241). However, Plaintiff cannot attack his conviction through a writ of mandamus just because he cannot breakthrough the gatekeeping mechanisms of Section 2255. *In re Spann*, 403 F. App'x at 744. ("[m]andamus does not become available simply because the sentencing court previously denied relief under section 2255 or because the gatekeeping provisions of section 2255 make it difficult to pursue a successive motion.). So, Plaintiff's mandamus request must be dismissed. Leave to amend would also be futile, since mandamus relief is unavailable in this case.

Court for a habeas writ under 28 U.S.C. § 2241. *See In re Dorsainvil*, 119 F.3d 245 (3d Cir. 1997).

IV. CONCLUSION

It is RECOMMENDED that:

(1) Mr. Jones' Complaint (Doc. 1) should be DISMISSED for failure to state a claim upon relief can be granted.

(2) The Clerk of Court be DIRECTED to CLOSE this case.

Date: December 29, 2021

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RAYMOND JONES, Plaintiff	)	CIVIL ACTION NO. 4:21-CV-0336
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NOTICE IS HEREBY GIVEN that 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 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.

Date: December 29, 2021

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge