

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4027

FREDERICK JOHN DAVIS,
Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 05-cv-02025)
District Judge: Honorable William J. Nealon

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
March 22, 2007

Before: MCKEE, FUENTES and WEIS, Circuit Judges

(Filed: April 17, 2007)

OPINION

PER CURIAM.

Frederick John Davis, proceeding pro se, appeals an order of the United States District Court for the Middle District of Pennsylvania dismissing his civil rights complaint. While awaiting trial on charges including first-degree murder, Davis filed a complaint in the District Court asserting a claim under 42 U.S.C. § 1983 against the

Commonwealth of Pennsylvania. He alleges in the complaint that the Commonwealth fabricated evidence against him, and he requests monetary and injunctive relief. The District Court granted the Commonwealth's motion to dismiss the complaint, and Davis now appeals.¹ Because Davis is proceeding in forma pauperis, we must dismiss the appeal if it lacks an arguable factual or legal basis. 28 U.S.C. § 1915(e)(2)(B); Neitzke v. Williams, 490 U.S. 319, 325 (1989).

We agree with the District Court that the Commonwealth is not a proper defendant in an action under § 1983, see Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989), and the suit is barred by the Eleventh Amendment, see Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981). Because Davis does not allege misconduct by any person amenable to suit under § 1983, the District Court did not need to afford Davis an opportunity to amend his complaint prior to granting the Commonwealth's motion to dismiss. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002) (noting that leave to amend may be denied on futility grounds).

Accordingly, we will dismiss the appeal under 28 U.S.C. § 1915(e)(2)(B). The motions for waiver of fees and for oral argument by video conference are denied.

¹ A jury convicted Davis of the murder charge shortly after he filed this appeal. See Commonwealth v. Davis, Court of Common Pleas of Monroe County, Pennsylvania, docket number CP-45-CR-0000651-2005. To the extent that Davis' claim implies the invalidity of his conviction, it is barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).