

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2664

BRIAN THOMPSON,
Appellant

v.

MOHAMED SAFA, Sergeant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:23-cv-04742)
District Judge: Honorable Paul S. Diamond

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 2, 2026
Before: KRAUSE, RESTREPO, and PORTER, *Circuit Judges*

(Opinion filed September 8, 2026)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Brian Thompson, a Pennsylvania state prisoner proceeding pro se and in forma pauperis, appeals from the District Court's order dismissing his civil rights complaint against defendant Mohamed Safa, a corrections officer employed at SCI-Phoenix. We will affirm in part and vacate in part the District Court's judgment and remand for further proceedings.

I.

Thompson, proceeding pro se and in forma pauperis (IFP), sued Safa in state court, alleging violations of his constitutional and other rights based on Safa's treatment of him in prison.¹ After removing the complaint to the District Court, Safa sought and obtained the dismissal of Thompson's Eighth Amendment claims.

The Court then dismissed the remainder of plaintiff's claims without prejudice pursuant to § 1915(e)(2), and Thompson timely filed an amended complaint.² In response, Safa filed a motion to dismiss. The District Court concluded that plaintiff failed to state a claim and dismissed his complaint with prejudice pursuant to § 1915(e)(2). This timely appeal followed.

II.

¹ Because we write primarily for the parties, who are familiar with the facts of this case, we will discuss the details only as they are relevant to our analysis.

² Because several pages were missing from plaintiff's amended complaint, the Court granted the plaintiff another opportunity to file an amended complaint, at which point the plaintiff filed his operative amended complaint.

We have jurisdiction under 28 U.S.C. § 1291. Whether a complaint is dismissed pursuant to Rule 12(b)(6) or 28 U.S.C. § 1915(e)(2)(B)(ii), our review is plenary. *See Dooley v. Wetzel*, 957 F.3d 366, 373–74 (3d Cir. 2020); *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000).

III.

First, as the District Court concluded, Thompson’s state law claims are barred by Pennsylvania’s sovereign immunity statute, *see* 1 Pa. Cons. Stat. Ann. § 2310. Essentially, in claiming things like intentional infliction of emotional distress (IIED), conspiracy, breach of contract and defamation, Thompson sued Safa in his individual capacity for acts within the scope of his employment.³ Accordingly, Safa was entitled to immunity, even if animosity colored his actions or if his calling Safa a rat could be considered an intentional tort.⁴ *See Maute v. Frank*, 657 A.2d 985, 986 (Pa. Super. Ct. 1995); *Fitzgerald v. McCutcheon*, 410 A.2d 1270, 1272 (Pa. Super. Ct. 1979) (explaining that, under Pennsylvania law, an employee’s act will be considered within the scope of

³ Thompson admitted to only suing Safa in his individual capacity, except where his claim sought injunctive relief.

⁴ Even if calling Thompson a rat is not within the scope of Safa’s employment, Thompson has not made out an IIED claim, because being called “a rat” one time, for filing grievances against a prison official, does not constitute outrageous behavior under Pennsylvania law. *See Gray v. Huntzinger*, 147 A.3d 924, 928 n.1 (Pa. Super. Ct., 2016) (“The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” (citing The Restatement (Second) of Torts § 46)).

employment if: “(a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the [employer], and (d) if force is intentionally used by the [employee] against another, the use of the force is not unexpected by the [employer].”); *Brumfield v. Sanders*, 232 F.3d 376, 380 (3d Cir. 2000); *La Frankie v. Miklich*, 618 A.2d 1145, 1149 (Pa. Commw. Ct., 1992) (holding that when a cause of action arises from an intentional tort, liability will not attach if a Commonwealth employee acted within the scope of his employment).

The District Court also properly dismissed Thompson’s claim for declaratory relief because such relief is inappropriate solely to adjudicate past conduct, as he requested. *See CMR D.N. Corp. v. City of Philadelphia*, 703 F.3d 612, 628 (3d Cir. 2013) (explaining that a declaratory judgment is “prospective in nature”). Likewise, and despite his argument that he suffers an ongoing injury from the issuance of negative work report, injunctive relief was not available to right his claims of past wrongs.⁵ *See Brown v. Fauver*, 819 F.2d 395, 400 (3d Cir. 1987) (“In order to obtain standing for prospective

⁵ Also, to the extent that Thompson sought punitive damages as a standalone action apart from any of his underlying claims, the District Court properly dismissed his request. *See Williams v. Walsh*, 558 F.2d 667, 671 (2d Cir. 1977) (holding that a request for punitive damages is not a standalone cause of action, but rather a remedy).

relief, the plaintiff must establish a real and immediate threat that he would again be the victim of the allegedly unconstitutional practice.” (citation modified)).

We look now at Thompson’s constitutional claims. The District Court properly dismissed Plaintiff’s failure to warn,⁶ failure to protect, and state-created zone of danger claims under the Eighth Amendment, all stemming from Safa’s allegedly referring to Thompson as a “rat” to another inmate for filing a grievance against Safa.

For Thompson to prevail on the claim that Safa violated the Eighth Amendment by failing to guarantee his safety, Thompson “must show that he is incarcerated under conditions posing a substantial risk of serious harm,” and “a prison official must have a “sufficiently culpable state of mind . . . one of deliberate indifference to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834. (1994) (citation modified). While our Court has held that being labeled a “snitch” who informs on other inmates can constitute deliberate indifference, *see Bistrain v. Levi*, 696 F.3d 352, 367 (3d Cir. 2012), that was not Thompson’s situation, because he was labeled a “rat” for filing a grievance against a prison official, not for informing on a fellow inmate. Even if being called a rat does pose a sufficiently substantial risk of harm, Thompson does not offer any allegations, apart

⁶ In his amended complaint before the District Court, Thompson argued that Safa had a duty to warn him before referring to him as a “rat,” which the District Court properly dismissed as frivolous. In his brief on appeal, Thompson’s “failure to warn” claim is essentially the same as a “failure to protect” claim, which the District Court also properly dismissed, as discussed *infra*.

from his own beliefs, that Safa actually knew or was aware of the excessive risk posed to Thompson's safety. *See Beers-Capitol v. Whetzel*, 256 F.3d 120, 125 (3d Cir. 2001).

Accordingly, the District Court properly dismissed his failure to protect claim. Because Thompson did not allege that he experienced any harm as a result of Safa's actions, he also could not prevail on his state-created zone of danger claim, *see Mark v. Borough of Hatboro*, 51 F.3d 1137, 1152 (3d Cir. 1995), as the District Court properly concluded.

Additionally, the District Court properly dismissed Thompson's claim that the filing of a negative work report against him violated his "right to notice and hearing before any substantial deprivation of property and/or liberty by the state," ECF Doc. 40 ¶ 100, as there is no property or liberty interest in prison employment that is entitled to protection under the Due Process Clause. *See Bryan v. Werner*, 516 F.2d 233, 240 (3d Cir. 1975). Thompson's "class of one" equal protection claim, which alleged that he was treated differently than similarly situated individuals when he was terminated from his prison employment, was also properly dismissed. *See Engquist v. Oregon Dep't of Agr.*, 553 U.S. 591, 605 (2008) (holding that "the class-of-one theory of equal protection—which presupposes that like individuals should be treated alike, and that to treat them differently is to classify them in a way that must survive at least rationality review—is simply a poor fit in the public employment context").

Thompson also alleged a First Amendment retaliation claim, arguing that the negative work report and his termination were retaliatory actions taken against him

because he filed a grievance about Safa. In order for a plaintiff to prevail on a First Amendment retaliation claim, he must establish that: “(1) his conduct was constitutionally protected; (2) he suffered an adverse action at the hands of prison officials; and (3) his constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him.” *Watson v. Rozum*, 834 F.3d 417, 422 (3d Cir. 2016). Thompson’s pleading satisfied the first element because filing a grievance, or even simply expressing the intent to file a grievance, is constitutionally protected activity. *See Watson*, 834 F.3d at 422-23.

Considering the second element, the District Court concluded that “Thompson has not alleged that his employment was actually terminated.” ECF Doc. No. 24 at 6; ECF Doc. No. 44 at 5 (relying on ECF Doc. No. 24). But Thompson repeatedly alleged that he had been terminated from his position. *See* ECF Doc. 40 ¶¶ 31, 32, 104, 105. The District Court also thought that Thompson’s allegation was undermined by a prison official’s statement, which was included in Thompson’s complaint, that his hours had merely been reduced; however, Thompson, while reporting that statement, clearly alleged that this explanation was untrue. *See* ECF Doc. 40 ¶ 36. The District Court also inferred that Thompson remained employed because he reported that a negative work report was issued three weeks after his alleged termination. But, because the complaint lacks further details about the work report, there is no way to discern whether it addressed present conduct or past conduct that would have pre-dated the alleged termination.

At the motion to dismiss stage, the Court must accept the facts pleaded in the plaintiff's complaint as true and view them in the light most favorable to the plaintiff. *See Fleisher v. Standard Ins. Co.*, 679 F.3d 116, 120 (3d Cir. 2012). Doing that here, Thompson has met his burden to plead an adverse action.⁷ *See Wisniewski v. Fisher*, 857 F.3d 152, 157 (3d Cir. 2017) (holding that being terminated from a prison employment position is an adverse action for the purposes of a First Amendment retaliation claim). As to the third element, Thompson also plausibly alleged that, after expressing his intent to file a grievance, he was the only individual to be removed from his work assignment, and that he had never previously been restricted in his work hours, thereby supporting an inference that his constitutionally protected conduct was a motivating factor in his discipline. Thompson has therefore plausibly pleaded a First Amendment retaliation claim related to his prison job termination, precluding dismissal at this stage.⁸

Accordingly, we will affirm the judgment insofar as the District Court's dismissed Thompson's state law claims, Eighth Amendment claims, Fourteenth Amendment claims, and First Amendment claim as it relates to the negative work report. We will vacate the

⁷ Thompson also alleged that Safa's issuance of a negative work report constituted an adverse action, but that action can properly be considered de minimis, *see McKee v. Hart*, 436 F.3d 165, 170 (3d Cir. 2006); *Watson*, 834 F.3d at 423.

⁸ Appellee argues that Thompson forfeited this issue on appeal, *see In re Wettach*, 811 F.3d 99, 115 (3d Cir. 2016); however, we construe pro se filings liberally, *see Erikson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), and determine that Thompson's appellate brief sufficiently preserved the retaliation issue.

District Court's judgment to the extent that it dismissed Thompson's First Amendment retaliation claim based on the termination from his prison employment, and we will remand this matter for further proceedings consistent with this opinion.