

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jerome Marshall, :
Appellant :
 :
v. : No. 439 C.D. 2025
 : Submitted: June 16, 2026
Stephen Longstreth, Jayme E. Gardner, :
Michael Zaken, George M. Little, :
Maureen Malanoski :

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 20, 2026

Jerome Marshall (Marshall), who represented himself in the proceedings below and continues to represent himself on appeal, appeals from two orders of the Court of Common Pleas of Greene County (trial court), both dated October 25, 2024.¹ The first order denied Marshall's motion for appointment of counsel. The

¹ This matter is procedurally nuanced. Marshall actually filed three notices of appeal to the Pennsylvania Supreme Court, one on November 22, 2024, and two others on December 12, 2024. Original Record (O.R.), Item Nos. 15, 16, 20. In response to a request for clarification from the Greene County Prothonotary, Marshall advised he was appealing both October 25, 2024 Orders. *Id.* at 17, 19. Marshall also filed an application for appointment of counsel and an application to proceed *in forma pauperis* in the Supreme Court. On April 7, 2025, the Supreme Court transferred both applications to this Court, along with Marshall's appeal. By Order dated April 11, 2025, we granted Marshall leave to proceed *in forma pauperis*, waived this Court's filing fee, ordered Marshall to proceed in conformity with Pennsylvania Rule of Appellate Procedure (Pa.R.A.P.) 2151(b) (excusing a party from reproducing the record when granted *in forma pauperis* status), and denied his request for counsel.

second order (Order) (i) denied Marshall’s *in forma pauperis* petition, (ii) dismissed as frivolous under Section 6602(e)(2) of the Prison Litigation Reform Act (PLRA),² 42 Pa.C.S. § 6602(e)(2), his civil complaint (Complaint) seeking tort, declaratory relief and money damages against several Pennsylvania Department of Corrections (Department) employees (Department employees),³ and (iii) denied Marshall’s request for a temporary restraining order and preliminary injunction. On appeal, Marshall contends the trial court erroneously denied his request for counsel, and erroneously, and prematurely, dismissed his Complaint. After review, we affirm, albeit on different grounds.

I. Background

In his Complaint, Marshall purported to initiate civil litigation against five Department employees in their individual and official capacities.⁴ He alleged that after being released from the Restricted Housing Unit on April 21, 2022, he made a request to staff, including Unit Manager Longstreth and Major Malanoski, for the return of “his [four] legal boxes [of] property along with his other property.” Complaint at 6, ¶¶ 8, 10-11. Marshall averred on April 22, 2022, Unit Manager Longstreth “came to [his] cell, . . . showed him [two] empty record boxes and an

² 42 Pa.C.S. §§ 6601-08.

³ The Complaint named as defendants the following Department employees: Unit Manager Stephen L. Longstreth (Unit Manager Longstreth), Law Librarian Jayme E. Gardner (Law Librarian Gardner), Superintendent Michael Zaken (Superintendent Zaken), Department Secretary George M. Little (Secretary Little), and Major of Guards Maureen Malanoski (Major Malanoski). Complaint at 4-6, ¶¶ 3-7, 12. Marshall was under the Department’s custody at the State Correctional Institution (SCI) at Greene (SCI-Greene) when he filed the Complaint. *Id.* at 6. Marshall is currently incarcerated at SCI-Coal Township. *See* Inmate/Parolee Locator, Pa. Dep’t of Corr., <https://inmatelocator.cor.pa.gov> (last visited Oct. 19, 2026).

⁴ As the trial court observed, the Complaint is undocketed, but dated October 10, 2024. Order at 1.

empty footlocker,” and told him all of his “state clothes . . . typewriter, [television], [radio], [cosmetics], [commissary purchases], . . . fan, etc. . . . , must go into the box and be counted.” *Id.* at 6, ¶ 12. Marshall stated this was “scientifically unattainable and spatially impossible” to place all of these items plus his legal boxes into two record boxes and a footlocker. *Id.* at 6, ¶ 13. Marshall “explained that he is [*pro se*] and just got off [death] row after 34 years . . . and his property and his legal boxes are ‘grandfather[ed]’ in” under “DC-ADM 815 Personal Property [P]olicy (Policy 815).” *Id.* at 6-7, ¶¶ 14-15. Marshall averred Unit Manager Longstreth indicated “[Policy 815] doesn’t apply for population inmates[,]” and “[Marshall] will ship it, or destroy it.” *Id.* at 7, ¶¶ 15-16.

Consequently, Marshall stated he filed grievance #977640 on April 22, 2022, and exhausted it on October 11, 2022. *Id.* at 7, ¶ 17. Marshall further alleged he filed grievance #994294 against Unit Manager Longstreth and Law Librarian Gardner on August 18, 2022, which he exhausted on December 29, 2022, “for retaliation and denying me the weekly access and the additional access in times afforded to [*pro se*] defendants who ha[ve] deadlines or open litigation, and in which I had provided a copy to them . . . [of] notice of my PCRA⁵ filing deadline, yet refused access to [*pro se*] services.” *Id.* at 7, ¶ 18. Additionally, Marshall averred he contacted Superintendent Zaken and Secretary Little to no avail. *Id.* at 7, ¶ 19.

Regarding remedies, Marshall generally sought return of his four boxes of legal property, which he averred had been “confiscated, lost or destroyed.” *Id.* at 7. He demanded judgment against Unit Manager Longstreth for “[i]ntentionally [i]nfllicting emotional and mental anguish on [him] by . . . [d]epriving [him] of legal property” and Law Librarian Gardner “for depriv[ing him] of extra access to [the

⁵ “PCRA” references the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-46.

l]ibrary,” both causing him to miss a PCRA deadline. *Id.* at 8, ¶¶ 20-21, 25, 28. In turn, he pled claims against both “for negligence in excess of \$50,000.” *Id.* at 8, ¶ 29. Similarly, he pled claims for negligence against Superintendent Zaken, Secretary Little, and Major Malanoski regarding their failure to investigate alleged policy violations and abuse, thus violating his constitutional rights and liberties. *Id.* at 9-10, ¶¶ 30-44.

Additionally, Marshall asserted a claim for retaliation against Unit Manager Longstreth, demanding judgment in excess of \$75,000. *Id.* at 12. Marshall averred he went to Unit Manager Longstreth’s block in October 2019 after being released from death row, and Unit Manager Longstreth harassed him by “attempting to blackmail[him],” “denying [him] medical help and a cell,” and lying to his family about the status of his medical and mental health condition. *Id.* at 11. Marshall “filed a complaint[,]” and was “removed from his block, until covid returned [him] back and the harassment continued.” *Id.* at 12. Marshall averred Unit Manager Longstreth “took my legal property and [i]ntentionally misled me on [Policy 815].” *Id.* In turn, this impacted his “right to present a defense in [his] PCRA,” and “cause[d] destruction or loss of all my legal property.” *Id.*

Further, Marshall generally alleged the Department employees violated his constitutional rights secured by the First,⁶ Fifth,⁷ Sixth,⁸ and Fourteenth⁹ Amendments to the United States Constitution, as well as article I, section 9 of

⁶ U.S. CONST. amend. I.

⁷ U.S. CONST. amend. V.

⁸ U.S. CONST. amend. VI.

⁹ U.S. CONST. amend. XIV.

Pennsylvania’s Constitution.¹⁰ *Id.* at 13. Additionally, he asserted a request for declaratory judgment that the Department unconstitutionally applied Policy 815, that a *pro se* plaintiff has a legal interest to maintain his legal property in his cell or in storage at all times, and that he can keep all of his legal books and property for the remainder of his incarceration under a “Grandfather Clause.” *Id.* at 14. Finally, Marshall sought a temporary restraining order and preliminary injunction against the Department employees, with the requested relief of having the trial court “order all [four] legal boxes to be returned/or compensated for” and his “PCRA that is currently held due to this matter, be restored and all legal material pertaining to my [c]riminal case be duplicated.” *Id.* at 17. Marshall also petitioned the trial court to grant him *in forma pauperis* status. Application to Proceed *In Forma Pauperis*, O.R., Item No. 24.

The trial court denied Marshall’s motion to appoint counsel. Order, 10/25/24, O.R., Item No. 21. Additionally, in its Order, the trial court determined “[Marshall’s] documents set forth allegations which sound in prison condition[s] litigation[,]” which is defined as:

[a] civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the effects of actions by a government party on the life of an individual confined in prison. The term includes an appeal. The term does not include criminal proceedings or habeas corpus proceedings challenging the fact or duration of confinement in prison.

Order, 10/25/24, O.R., Item No. 23, at 3 (quoting, among other things, 42 Pa.C.S. § 6601). In turn, the trial court *sua sponte* ruled the Complaint was frivolous and dismissed the matter entirely under Section 6602(e)(2) of the PLRA, which provides

¹⁰ Pa. CONST. art. I, § 9.

“a court shall dismiss such litigation at any time if it determines, [among other things] that the litigation fails to state a claim upon which relief may be granted.” *Id.* at 6 (quotation omitted). In doing so, the trial court explained “it is the understanding of the instant [c]ourt that the policies and procedures of the [Department] are implemented for specific reasons and without [c]ourt involvement. Policies and procedures related to inmate legal storage and/or legal material and/or cell content is a policy/procedure regulated by the [Department].” *Id.* at 7. In denying Marshall’s request for a temporary restraining order and a preliminary injunction, the trial court reasoned “restrictions on inmate storage and/or legal material and/or cell content while housed in the [Department] is not with the [c]ourt’s discretion and fails to provide sufficient evidence to grant such relief.” *Id.* at 2-3. The trial court also denied Marshall’s application to proceed *in forma pauperis*. *Id.* at 7.

Marshall timely appealed. In response, the trial court directed Marshall to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, which Marshall filed soon thereafter. On January 13, 2025, pursuant to Rule 1925(a), the trial court issued a statement regarding its order. Statement Pursuant to Pa.R.A.P. 1925(a), 01/13/2025, O.R., Item No. 11. The trial court explained it would be relying upon its prior orders dated October 25, 2024, with no additions to the record.¹¹ *Id.*

II. Discussion

We consider whether the trial court erred by denying Marshall’s motion to appoint counsel, and dismissing Marshall’s Complaint. When the trial court

¹¹ This Court mailed a briefing schedule to the Department employees on May 12, 2025. Notice of Receipt of Record & Briefing Schedule at 1. On June 24, 2025, the Department notified the Court that the Department would “not participate in this appeal as the matter was dismissed by the [trial court] prior to service.” Notice of Non-Participation at 1.

dismisses a complaint *sua sponte* for failure to state a cause of action upon which relief may be granted, our scope of review of the trial court’s order is plenary, *Whitaker v. Wetzel*, 170 A.3d 568, 572 n.3 (Pa. Cmwlth. 2017), meaning “we reassess the record with a fresh pair of eyes.” *Allegheny Cnty. Dep’t of Health v. Wilkerson*, 329 A.3d 111, 117 (Pa. Cmwlth. 2024). Additionally, “our scope of review is plenary when considering questions of law.” *Whitaker*, 170 A.3d at 572 n.3.

Regarding Marshall’s request for appointment of counsel, Marshall filed an identical request with this Court. Application for Appointment of Counsel. We also denied Marshall’s application, explaining Marshall “is not entitled to appointed counsel in this type of action, which is limited to [Marshall’s] appeal of the dismissal of his civil action.” See April 11, 2025 Order (denying counsel based upon “Section 6 of the Public Defender Act, Act of December 2, 1968, P.L. 1144, *as amended*, 16 P.S. § 9960.6; see *Harris v. Dep’t of Corr.*, 714 A.2d 492 (Pa. Cmwlth. 1998) (applying factors to be weighed against the presumption that an indigent is entitled to appointed counsel only where his physical liberty is at stake’’)). Thus, the trial court did not err in denying Marshall’s motion to appoint counsel.

Turning to the dismissal of his Complaint, Marshall does not dispute whether the Complaint concerns prison conditions litigation. See Marshall’s Br. at 6.¹² Consequently, Section 6602(e)(2) of the PLRA applies, which provides:

[t]he court *shall dismiss* prison conditions litigation *at any time*, including prior to service on the defendant, if the court determines . . . :

¹² Electronic pagination supplied for ease of reference.

[t]he prison conditions litigation is *frivolous* . . . or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

42 Pa.C.S. § 6602(e)(2) (emphasis added). A frivolous action is one “which lacks any basis in law or fact.” *Robinson v. Pa. Bd. of Prob. & Parole*, 582 A.2d 857, 860 (Pa. 1990).

Here, the trial court issued its order stating Marshall’s Complaint was frivolous under Section 6602(e)(2) of the PLRA, and reasoned the court did not have “discretion” to become involved in Department policies and procedures. Order, 10/25/24, O.R., Item No. 23, at 2-3, 6-7. However, upon reviewing an identical trial court rationale, this Court has cautioned “[n]evertheless, these regulations and their implementation are not exempt from review, and are as susceptible to due process requirements as any other governmental action.” *Whitaker*, 170 A.3d at 574. Thus, to the extent the trial court based its dismissal upon its perceived inability to review the Department’s actions, the trial court erred.¹³ We review whether other grounds support the trial court’s frivolity determination.

The trial court did not address affirmative defenses, and indeed, “the defense of sovereign immunity can provide a basis for dismissal of a prison conditions lawsuit.” *McCool v. Dep’t of Corr.*, 984 A.2d 565, 570 (Pa. Cmwlth. 2009). In *Paluch v. Pennsylvania Department of Corrections*, we observed, generally, sovereign immunity under the Sovereign Immunity Act (Act)¹⁴ shielded Department

¹³ Nonetheless, it is well settled that we “may affirm on other grounds where grounds for affirmance exist.” *Kutnyak v. Dep’t of Corr.*, 748 A.2d 1275, 1279 n.9 (Pa. Cmwlth. 2000); *accord Sloane v. Workers’ Comp. Appeal Bd. (Children’s Hosp. of Philadelphia)*, 124 A.3d 778, 786 n.8 (Pa. Cmwlth. 2015).

¹⁴ 42 Pa.C.S. §§ 8501-02, 8521-27.

employees acting within the scope of their employment from a prisoner's intentional tort claims. 175 A.3d 433, 438 (Pa. Cmwlth. 2017). We further explained that unless falling within an enumerated list of statutory exceptions, the Act also provided a Department employee acting within the scope of his or her duties sovereign immunity from liability for tort claims arising from negligent acts. *Id.* We specifically noted one such exception for negligent acts by Department employees for damage to a prisoner's property while the property was under the Department's possession. *Id.* at 441 (citing, among other things, 42 Pa.C.S. § 8522(b)(3)). However, despite the petitioner's use of the term "negligent," we discerned he actually alleged Department employees intentionally damaged his property, "a claim which is barred by the doctrine of sovereign immunity." *Id.* (citation omitted).

Here, Marshall's Complaint set forth negligence claims against all Department employees. However, as in *Paluch, supra*, despite Marshall's use of the term "negligence," some of the allegations in his Complaint do not actually state a claim for negligence. Rather, Marshall alleged various intentional actions by Unit Manager Longstreth, including "[i]ntentionally [i]nfllicting emotional and mental anguish on [him] by . . . [d]epriving [him] of legal property," and Law Librarian Gardner, such as "depriv[ing him] of extra access to [the l]ibrary." Complaint at 8, ¶¶ 20-21, 25, 28. Consequently, these claims are barred by the doctrine of sovereign immunity.¹⁵ *Paluch*, 175 A.3d at 441. Marshall's remaining negligence claims against Superintendent Zaken, Secretary Little, and Major Malanoski alleged failures to investigate and the failure to address policy violations. However, these

¹⁵ To the extent the Complaint also purported to raise a tort claim for the intentional infliction of emotional distress, *see* Complaint at 13, VII(1), this claim is similarly precluded by sovereign immunity.

allegations do not fall within an exception to sovereign immunity under the Act. *See* 42 Pa.C.S. § 8522(b). Thus, these claims are also barred by the doctrine of sovereign immunity. *Paluch*, 175 A.3d at 438. Accordingly, all of Marshall’s negligence claims were properly dismissed.

Turning to Marshall’s retaliation claim against Unit Manager Longstreth, it is well-settled that “[c]laims of retaliation fail if the alleged retaliatory conduct violations were issued for the actual violation of a prison rule.” *Nunez v. Blough*, 283 A.3d 413, 426 (Pa. Cmwlth. 2022) (quotation omitted). “Thus, a defendant may successfully defend a retaliatory discipline claim by showing some evidence the inmate actually committed a rule violation.” *Id.* (quotation omitted). Section 3.B.1 of Policy 815 permits a general population inmate to keep one footlocker and two records center boxes in his cell.¹⁶ Section 3.B.11.a of Policy 815 states that a Facility Manager may permit an inmate to maintain extra storage boxes for legal materials related to active cases. “Importantly, this provision is *permissive*, giving each facility manager the discretion to allow or deny an inmate to have extra storage boxes.” *Jordan v. Overmyer*, (Pa. Cmwlth., No. 1863 C.D. 2017, filed Oct. 11, 2018), slip op. at 3 (emphasis in original).¹⁷ Section 3.B.12 of Policy 815 provides in pertinent part, “[e]xcess property, as determined by the Facility Manager/designee, may be shipped out at the inmate’s expense or destroyed.”

In his retaliation claim, Marshall alleged Unit Manager Longstreth “took my legal property and [i]ntentionally misled me on [Policy 815].” Complaint at 12.

¹⁶Available at <https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/doc-policies/815-personal-property-state-issued-items-etc..pdf> (last visited Oct. 19, 2026).

¹⁷ Unreported memorandum opinions of this Court issued on or after January 15, 2008, may be cited for their persuasive value. *See* Section 414(a) of this Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a).

Marshall averred he filed and exhausted two grievances regarding, among other things, Unit Manager Longstreth's retaliatory conduct. *Id.* at 7, ¶¶ 17-18. Marshall incorporated the grievance documents into his Rule 1925(b) concise statement and his brief. Marshall's own submissions belie his retaliation claim. An Initial Review Response dated May 16, 2022, provided that initially, Marshall did not have a legal exemption "and the process could not be started because [he] did not know [his] case numbers." Marshall's Br. at 42. Thereafter, Marshall obtained a docket number, and submitted a Legal Property Exemption Request. *Id.* However, he was not granted an exemption because the Legal Assistance Center determined the docket was a "closed case." *Id.* Consequently, the Response advised, "[t]his excess property will be brought to the Intake/Property Processing Area where you will be provided the opportunity to ship/mail or dispose of it." *Id.*

Here, the Department's policy limits the number of boxes an inmate can keep in his cell, and Marshall admittedly exceeded that limit. Marshall did not plead any facts to support a conclusion that Department employees removed the boxes for any reason other than compliance with the Department's policy. Given the facts averred, as well as the discretionary language of Policy 815, we conclude the trial court properly dismissed Marshall's retaliation claim. *See generally Jordan, supra.*

Next, we address Marshall's alleged constitutional violations. Complaint at 13. In Count V, Marshall averred "the acts, consent and failures of several 'Defend[a]nts' violated '[his] Constitutional Rights.'" *Id.* Marshall did not identify specific Department employees, nor did he assert factual averments in conjunction with this Count. "A pleading must be sufficiently specific to enable a responding party to prepare a defense." *Sanders v. Wetzel*, 223 A.3d 735, 738 (Pa. Cmwlth. 2019) (citation omitted). Thus, because this count did not contain any factual

references to acts or actors, the Department employees would not be able to defend against Marshall's claim. We therefore discern the trial court properly dismissed this claim.

Regarding Marshall's challenge to Policy 815, "[t]he law is well[] settled that the Department has broad discretion to fashion policies about what property inmates may possess, and to modify those policies as security needs evolve or change. *O'Toole v. Pennsylvania Dep't of Corr.*, 196 A.3d 260, 267 (Pa. Cmwlth. 2018) (emphasis omitted). In the Complaint and in the grievance process, Marshall suggested that any previous property storage space he was afforded while housed before his placement in general population¹⁸ should be "grandfathered in." See Complaint at 14, ¶ 8, and 15, and Marshall's Br. at 43. Marshall provided no authority to support an equal protection claim. Moreover, we have observed "in order to state a cognizable claim for violation of the right to access to the courts, **a prisoner must allege and offer proof that he suffered an 'actual injury'** to court access as a result of the denial." *Page v. Rogers*, 324 A.3d 661, 681 (Pa. Cmwlth. 2024) (quotation omitted, emphasis in original). Other than generally averring Policy 815 "hindered [his] ability to challenge [his] sentence," Complaint at 15, ¶ 9, Marshall did not offer any proof of actual injury. To the contrary, as previously noted, Marshall's own grievance documents demonstrate that his case was closed. Marshall's Br. at 42. Thus, we conclude the trial court properly dismissed Marshall's request for declaratory relief regarding Policy 815.

Turning to Marshall's request for a temporary restraining order and preliminary injunction, we have held that in addition to claims for damages,

¹⁸ Section 3.B.2 of Policy 815 addresses property storage for inmates in Disciplinary Custody and Administrative Custody. Section 3.B.3 of Policy 815 concerns property storage for inmates in specialized housing, and Section 3.B.4 addresses property storage for Capital Case inmates.

“sovereign immunity bars claims seeking mandatory injunctions to compel affirmative action by Commonwealth officials.” *Page*, 324 A.3d at 679 (quotation and citation omitted). Here, Marshall’s motion requested the return of his four boxes of legal property, and that the Department employees be enjoined “from confiscating [his] legal work perman[en]tly and allow him to have it in his cell or maintained [in] storage.” Complaint at 18. Because Marshall requested affirmative action, sovereign immunity shields the Department employees from his claims. Thus, the trial court properly dismissed his request.

Finally, Marshall argues the trial court erred in not affording him leave to amend the Complaint, and he should be held to a “less stringent standard.” Marshall’s Br. at 6. “Leave to amend a complaint will be withheld where the initial complaint reveals that the prima facie elements of a claim cannot be established and where the defects are so substantial that amendment is not likely to cure the defects.” *Lacava v. Se. Pa. Transp. Auth.*, 157 A.3d 1003, 1017 (Pa. Cmwlth. 2017) (quotation omitted). While “[t]he allegations of a pro se complainant are held to a less stringent standard than that applied to pleadings filed by attorneys[,]” . . . Marshall is still “required to ‘plead all the facts that must be proved in order to achieve recovery on the alleged cause[s] of action.’” *Page*, 324 A.3d at 685 (quotations and emphasis omitted). Where, as here, Marshall has not pled sufficient facts to support his various claims, and because sovereign immunity bars many of Marshall’s claims, Marshall has not established amendment will likely cure the substantial defects. Accordingly, he is not entitled to relief.

III. Conclusion

Based on the foregoing, the trial court did not err in denying Marshall's request for counsel, and in dismissing his Complaint and his request for a temporary restraining order and preliminary injunction under the PLRA.

STACY WALLACE, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jerome Marshall,	:
Appellant	:
	:
v.	: No. 439 C.D. 2025
	:
Stephen Longstreth, Jayme E. Gardner,	:
Michael Zaken, George M. Little,	:
Maureen Malanoski	:

ORDER

AND NOW, this 20th day of October 2026, the October 25, 2024 orders of the Court of Common Pleas of Greene County are hereby **AFFIRMED**.

STACY WALLACE, Judge