

physical evidence, and negligence. Defendant Schmid now moves for summary judgment on all counts.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file showing a genuine issue of material fact for trial. See id. at 324. If the evidence is such that a reasonable jury could return a verdict for the non-moving party, then there is a genuine issue of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, all reasonable inferences are drawn in the light most favorable to the non-moving party. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or

weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

To establish a claim under 42 U.S.C. § 1983, a plaintiff must "demonstrate a violation of a right secured by the Constitution and the laws of the United States [and] that the alleged deprivation was committed by a person acting under color of state law." Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995); see Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970).

In examining Plaintiff's Amended Complaint, there is no specific mention of 42 U.S.C. § 1983; however, when a complaint is filed pro se, a court must "apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name." Holley v. Dep't of Veteran Affairs, 165 F.3d 244, 247-48 (3d Cir. 1999). The Amended Complaint does state that there is a "violation of United States and Pennsylvania Constitutional Rights, while acting under color of state law." Pl.'s Am. Compl. at 1. In liberally construing Plaintiff's pleadings, the Court finds the Plaintiff is attempting to raise a § 1983 claim.

Defendant Schmid argues that there is no genuine issue of material fact because Plaintiff's claim is time-barred. The appropriate statute of limitations in a § 1983 action is the state's statute of limitations for a personal injury claim. See Wilson v. Garcia, 471 U.S. 261, 280 (1985); see also Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998). In Pennsylvania, the statute of limitations for a personal injury claim, and therefore a § 1983 claim, is two years. See Herbert v. Reinstein, 976 F. Supp. 331, 336 (E.D. Pa. 1997). The statute of limitations on a § 1983 action accrues on the date when the plaintiff knew or should have known of the injury that formed the basis of his or her complaint. See Herbert, 976 F. Supp. at 336; see also Genty v. Resolution Trust Corp., 937 F.2d 899 (3d Cir. 1991).

Here, the basis for the allegations in Plaintiff's Amended Complaint are events that began on January 15, 1999 and continued through January 18, 2001. See Pl.'s Am. Compl. at 2. Plaintiff lists each instance and the effect it allegedly had on his attempt to access the court system in his Amended Complaint. See Pl.'s Am. Compl. at 2-3. On each date listed, Plaintiff sent a request to Defendant Schmid for documents relating to his criminal case. See id. Plaintiff bases the underlying argument that his rights were violated on Defendant Schmid's alleged failure to respond to Plaintiff's requests. Plaintiff repeatedly

states in his Amended Complaint and in his response to Defendant Schmid's summary judgment motion that Defendant Schmid's actions began on January 15, 1999. See Pl.'s Am. Compl. at 1, 2, and 5; see also Pl.'s Opp. to Def.'s Mot. for Summ. J. at 1 (stating that the "defendant's from 1999 till [sic] 2004 and 2005 are still not producing the records and documents.") Even if the Court includes a full year after Plaintiff's initial request, to allow for Plaintiff to realize he was not receiving a response, the statute of limitations would begin to run on January 15, 2000. After receiving nothing for one year, the Plaintiff knew or should have known of the underlying injury comprising his § 1983 action. Following this analysis, the statute of limitations on this claim expired on January 15, 2002.¹

As previously noted, Plaintiff did not file his petition to proceed in forma pauperis until April 22, 2002, and did not file his Amended Complaint until April 8, 2003. Accordingly, since Plaintiff failed to file his § 1983 claim, by filing either the petition to proceed in forma pauperis or the complaint² within the specified statute of limitations, Defendant Schmid's motion for summary judgment is granted.

¹ The Court includes this timeline to further clarify why the statute of limitations has run. The Court is not opining on the merits of the underlying § 1983 claim.

² The Court will not discuss whether the statute of limitations was tolled when Plaintiff filed his petition to proceed in forma pauperis. As discussed in the body of the opinion, even if the Court deemed the action commenced at the filing of the petition, the Plaintiff could not survive this motion for summary judgment.

IV. CONCLUSION

For the reasons stated above, Defendant's motion is granted and the case is dismissed in its entirety.

An appropriate Order follows.

