

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VINCENT FERST, : CIVIL ACTION
: :
Plaintiff, : NO. 05-CV-0682
: :
v. : :
: :
DETECTIVE THOMAS GAUL, : :
DETECTIVE JOHN VERRICHIO : :
: :
Defendants. : :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

April 28, 2006

Before the Court is defendants' motion for summary judgment. For the following reasons, defendants' motion will be granted as to all claims.

I. BACKGROUND

For the purposes of this motion, the facts cited below are either undisputed or viewed in the light most favorable to plaintiff.

In February or March 2005¹ pro se plaintiff filed a § 1983 complaint alleging that he was beaten on two occasions in February 2002 by Philadelphia and Whitemarsh Township police officers following a high-speed chase in a stolen car.

On September 30, 2005 defendants filed a motion to dismiss, which contended that plaintiff's claims were time-barred

¹ Plaintiff alleges that his initial complaint was filed in February 2005, but it was returned for procedural reasons and was not docketed. The first complaint docketed was March 10, 2005.

under the applicable two-year statute of limitations.² Plaintiff responded that the statute of limitations should be equitably tolled because his mental condition and the psychotropic medications that he was taking during his incarceration following his arrest inhibited his ability to file a complaint. Plaintiff alleged he was placed in medical segregation at the Philadelphia Prison System, Curron-Fromhold Correctional Facility, for approximately sixteen months following the alleged February 2002 beatings, until June 2003. Plaintiff further contended that in June 2003, although he was released from medical segregation and placed into the general population at State Correctional Institution at Graterford, he was still on psychotropic medications and suffered from mental illness, which prevented him from timely filing the complaint.

In a Memorandum and Order dated December 1, 2005 (doc. no. 36), the Court denied defendants' motion to dismiss in part, "conclud[ing] that plaintiff has alleged sufficient facts to establish the potential applicability of equitable tolling." The Court continued, "Whether equitable tolling is warranted in these circumstances requires further development of the facts and,

² Plaintiff's § 1983 claims, which are grounded in tort liability, are subject to Pennsylvania's statute of limitations governing personal injury actions. See Garvin v. City of Philadelphia, 354 F.3d 215, 220 (3d Cir. 2003). Pennsylvania's statute of limitations for personal injury actions is two years. 42 Pa. C.S.A. § 5524.

therefore, is best addressed by a motion for summary judgment once plaintiff's deposition is taken and the plaintiff is afforded an opportunity for discovery." The Court also issued an amended scheduling order, which granted leave to defendants to take plaintiff's deposition, established a deadline for defendants to file a motion for summary judgment,³ and set a deadline for plaintiff to either file a response to the motion for summary judgment or a request for specific discovery needed to file a response (doc. no. 37).

Since that time, defendants deposed plaintiff and filed the instant motion for summary judgment. Plaintiff has failed to file a timely response to the motion for summary judgment or request for specific discovery needed to respond to the motion, see Fed. R. Civ. P. 56(f), despite specific instructions from the Court and ample opportunity to make a submission. Although plaintiff has not filed a response, the Court will analyze the motion under the Rule 56 standard to determine whether defendants are entitled to judgment.⁴

³ Defendants' deadline to file their motion for summary judgment was subsequently extended by the Court (doc. nos. 38 & 39).

⁴ After the expiration of the filing deadline, the Court received a motion to compel defendants to serve a copy of plaintiff's December 29, 2005 deposition and for an extension of time to respond to defendants' motion for summary judgment upon receipt of said transcript. Plaintiff alleges that he returned the draft copy of his deposition to the stenographer when he submitted the errata sheet and did not receive a final version in

II. DISCUSSION

A. Legal Standard

A court may grant summary judgment when "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" if its existence or non-existence would affect the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. at 248-49. In determining whether any genuine issues of material fact exist, all inferences must be drawn, and all doubts must be resolved, in favor of the non-moving party. Coregis Ins. Co. v. Baratta & Fenerty, Ltd., 264 F.3d 302, 305-06 (3d Cir. 2001).

B. Equitable Tolling

Equitable tolling is justified when mental deficiency affects a prisoner's ability to "manag[e] his affairs and thus

return. Defendants point out that, even if true, plaintiff was provided a full and complete copy of his deposition transcript as an exhibit to defendants' motion for summary judgment over one month prior to plaintiff's deadline to respond. Even if the deposition transcript was not available to plaintiff, it contains plaintiff's own testimony and does not contain any evidence supporting his position for equitable tolling.

from understanding his legal rights and acting upon them.”
Graham v. Kyler, No. CIV.A. 01-1997, 2002 WL 32149019, at *3
(E.D. Pa. Oct. 31, 2002) (quoting Miller v. Runyon, 77 F.3d 189,
191 (7th Cir. 1996)). The party seeking the benefit of equitable
tolling bears the burden of establishing facts that justify
application of the doctrine. See Satterfield v. Johnson, 434
F.3d 185, 195 (3d Cir. 2006); Courtney v. LaSalle Univ., 124 F.3d
499, 505 (3d Cir. 1997). “The law is clear that courts must be
sparing in their use of equitable tolling.” Seitzinger v.
Reading Hosp. & Med. Ctr., 165 F.3d 236, 239 (3d Cir. 1999).

In this case, plaintiff has failed to produce any
evidence that supports equitable tolling of the statute of
limitations to the extent that would bring his cause of action
within the limitations period. At his deposition, plaintiff
consistently responded to defendants’ questions concerning the
circumstances and impact of his mental illness and medications by
pointing to the prison medical records submitted with his
complaint.

The Court has reviewed those records. The medical
records state that plaintiff had a psychiatric consult for
depression on February 23, 2003 and a psychiatric visit on May
30, 2003. The records also indicate that plaintiff took various
anti-psychotic and anti-depressant medications during periods of
his incarceration. However, the medication records stop in June

2002. According to the Release of Responsibility document signed by plaintiff, plaintiff refused to take his medications beginning in June 2002.

Based on these records, there is no evidence that supports plaintiff's assertion that the statute of limitations should be equitably tolled until February 2003, the date that would bring his February 2005 complaint within the two-year limitations period. At times, plaintiff claims that his medication prevented him from acting upon his legal rights. At other times, plaintiff claims that his mental illness prevented him from acting upon his legal rights.

In either case, plaintiff is unable to justify his contention of equitable tolling until February 2003. If plaintiff is relying upon the disabling effect of his medication, the records reflect that plaintiff no longer took the medication as of June 2002, approximately eight months before the first date that would bring his complaint within the statute of limitations.⁵ Nor can plaintiff rely on his alleged mental illness because from June 2000 on, he refused to take the treating medication.

⁵ Defendants submitted the affidavit of Dr. Haresh G. Mirchandani, Chief Medical Examiner for the City of Philadelphia. Dr. Mirchandani concluded that any cognitive impairment or memory loss caused by the medications (if there was any at all) would have resolved ten to fourteen after plaintiff stopped taking his medications.

Defendants also submitted the records from the computerized inmate housing database (Lock& Track) and the affidavit of Gregory J. Vrato, Deputy Director of Legal Affairs for the Philadelphia Prison System. These materials indicate that plaintiff was only housed in medical segregation for four days, from April 2, 2002 to April 6, 2002. For the remainder of plaintiff's incarceration, he was not housed in any type of medical treatment housing.

The Court finds that there is no genuine issue of material fact with respect to plaintiff's mental incapacitation caused by his medication extending past June or July 2002, when any effects of his medications would have resolved. Because plaintiff did not file his complaint until February 2005, even if the Court tolls the statute until July 2002 and even when drawing all inferences and resolving all doubts in favor of plaintiff, his complaint was still filed approximately eight months after the two-year statute of limitations had expired. The Court further finds that plaintiff's alleged mental illness is not grounds for equitable tolling since he refused to take the treating medication beginning in June 2002. See Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (holding that equitable tolling is proper only when plaintiff has "in some extraordinary way . . . been prevented from asserting his or her right"). Thus, summary judgment is warranted.

III. CONCLUSION

Summary judgment will be granted in favor of defendants on all claims. An appropriate order follows.⁶

⁶ Defendants also argue that summary judgment should be granted because plaintiff's allegations are a collateral attack on his Pennsylvania state court criminal conviction, and thus, are barred under Heck v. Humphrey, 512 U.S. 477 (1994). Given that the action is barred under the statute of limitations, the Court did not consider in any event whether allowing the action to proceed would implicate the integrity of the state court conviction and therefore would be barred under the teachings of Heck v. Humphrey.

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O R D E R

AND NOW, this 28th day of April, 2006, it is hereby
ORDERED that defendant's motion for summary judgment (doc. no.
40) is GRANTED as to all claims.

IT IS FURTHER ORDERED that plaintiff's motion to compel
defendants to serve a copy of plaintiff's deposition (doc. no.
42) is DENIED for the reasons stated in footnote four of the
Memorandum.

IT IS FURTHER ORDERED that this case shall be CLOSED.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

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J U D G M E N T

AND NOW, this 28th day of April, 2006, it is hereby
ORDERED that pursuant to the Court's order of April 28, 2006,
judgment is entered in favor of defendant and against plaintiff
as to all claims.

S/Eduardo C. Robreno

EDUARDO C. ROBRENO, J.