

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

HAROLD CANNON,)	
)	Civil Action
Plaintiff)	No. 06-cv-5505
)	
vs.)	
)	
JACK BAIRD;)	
STEVE BROWN;)	
JOHN DOE;)	
EDWARD RENDELL; and)	
JOHN STREET,)	
)	
Defendants)	

* * *

APPEARANCES:

HAROLD CANNON
Pro se

GENELLE FRANKLIN, ESQUIRE
ASSISTANT CITY SOLICITOR,
CITY OF PHILADELPHIA LAW DEPARTMENT
On behalf of Defendants

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendant John Street's Motion to Dismiss, filed on December 17, 2007, and Defendant Edward Rendell's Motion to Dismiss, filed on April 16, 2008. The Motion of Plaintiff Harold Cannon in Opposition of Defendant's John Street to Dismiss Complaint [*sic*] was filed on January 7, 2008. For the following reasons, I grant Defendant John Street's Motion to Dismiss and Defendant Edward Rendell's

Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Specifically, I grant Defendant John Street's Motion to Dismiss and Defendant Edward Rendell's Motion to Dismiss as to plaintiff's federal claims. Plaintiff's December 13, 2006 complaint was untimely because it was not filed within the period of any applicable statute of limitations. Additionally, because all federal claims have been dismissed, I decline to exercise supplemental jurisdiction over plaintiff's state law claims. Therefore, plaintiff's state law claims are dismissed without prejudice to re-assert such claims in a proper state forum.

JURISDICTION

Jurisdiction in this case is based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331. The court has supplemental jurisdiction over plaintiff's pendent state law claims. 28 U.S.C. § 1367(a).

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to plaintiff's claims allegedly occurred in Philadelphia, Pennsylvania, which is located within this judicial district.

CONTENTIONS OF THE PARTIES

Defendants' Contentions

Defendants Street and Rendell each seek to dismiss plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). They argue that plaintiff's federal civil rights claims and state tort claims should be dismissed because they are barred by the relevant statute of limitations. Defendants also argue that they are entitled to official immunity regarding plaintiff's state tort claims in accordance with the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §§ 8541-8564.

More specifically defendants contend that plaintiff may not recover on his federal claims for violations of his constitutional rights pursuant to 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986, nor on his state tort claims, because each applicable statute of limitations has expired.

Plaintiff's Contentions

Plaintiff avers that his complaint was filed in a timely manner. In his complaint, plaintiff alleges that he is a black citizen of the United States. He contends that his constitutional rights were violated on January 13, 1989 when two Philadelphia police officers arrested, and allegedly beat, him.

Specifically, plaintiff asserts claims under §§ 1981, 1983, 1985(3) and 1986 for violations of his constitutional rights under the First, Fourth, Fifth, Sixth, Eighth, and

Fourteenth Amendments to the United States Constitution. Plaintiff also alleges state tort claims for assault, battery, false arrest, false imprisonment, obstruction of justice, malicious prosecution, negligence, and gross negligence.

FACTS

Under the applicable standard of review discussed below, for the purpose of these motions I must accept as true all well-pled factual allegations in plaintiff's complaint and draw all reasonable inferences therefrom in the light most favorable to plaintiff as the non-moving party. Based upon that standard, the pertinent facts are as follows.

In an attempt to effectuate plaintiff's arrest on January 13, 1989, the two arresting Philadelphia police officers (defendants Jack Baird and Steve Brown) knocked him on the floor, hit him with their pistols, and threatened him with incarceration unless he indicated the location of certain illegal drugs. The beating was continuous and left plaintiff unconscious. Additionally, the officers searched plaintiff's residence without a valid warrant and arrested him without legal authorization.

Furthermore, the acts of defendant police officers were the product of a conspiracy involving two former Philadelphia mayors (defendants Edward G. Rendell, now Governor of the Commonwealth of Pennsylvania, and defendant John F. Street). Defendants conspired to cover-up or justify their actions.

Moreover, defendants directly caused plaintiff's injuries because the police department and city officials failed to properly train, supervise and discipline the two officers involved.

As a result of his January 13, 1989 arrest, plaintiff spent between fifteen and thirty months in prison. The two police officers involved in his arrest and beating were indicted in 1995 and pled guilty to corruption charges. On July 13, 2005, plaintiff's criminal charges were dismissed as nolle prossed by a court in the First Judicial District¹ of Pennsylvania.

PROCEDURAL HISTORY

Plaintiff commenced this action on December 18, 2006 by filing an Application to Proceed Without Prepayment of Fees and Costs. By Order dated April 25, 2007, plaintiff's application was denied for failure to provide his six-month prisoner account statement. Plaintiff filed an amended application on May 24, 2007. By Order dated October 18, 2007, plaintiff was informed that pursuant to 28 U.S.C. § 1915(b)(1), he would be obligated to pay the full filing fee for this action if he elected to continue this lawsuit.

By letter filed October 29, 2007, plaintiff indicated to the court that he wanted to continue his action. By my Order

¹ Plaintiff failed to provide sufficient identifying information of his Pennsylvania criminal case in either his Complaint or opposition brief. Because plaintiff alleges he was facing criminal charges I infer that his underlying criminal case was pending in the Philadelphia Court of Common Pleas. However, without any identifying information I could not locate plaintiff's case through an online electronic search.

dated November 9, 2007 plaintiff's amended Application to Proceed Without Prepayment of Fees and Costs was granted. Thereafter, plaintiff's complaint was filed on November 9, 2007.

Plaintiff claims that he attempted to file his complaint on December 13, 2006, but was prevented from doing so because he was a prisoner and did not provide his six-month prisoner account statement. Although plaintiff has not alleged the exact date when he delivered his complaint to prison officials, the complaint is dated December 13, 2006.

Based upon this averment, I interpret December 13, 2006 as the date plaintiff hand-delivered his complaint to prison officials for mailing. Thus, under the prisoner mailbox rule, plaintiff commenced this action on December 13, 2006 for the purposes of determining the applicable statutes of limitations. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998).

STANDARD OF REVIEW

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted". A 12(b)(6) motion requires the court to examine the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957) (abrogated in other respects by Bell Atlantic Corporation v. Twombly, ___ U.S. ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Except as provided in Federal Rule of Civil Procedure 9, a complaint is sufficient if it complies with Rule 8(a)(2). That rule requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. Twombly, ___ U.S. at ___, 127 S.Ct. at 1964, 167 L.Ed.2d at 940.

Additionally, in determining the sufficiency of a complaint, the court must accept as true all well-pled factual allegations and draw all reasonable inferences therefrom in the light most favorable to the non-moving party. Worldcom, Inc. v. Graphnet, Inc., 343 F.3d 651, 653 (3d Cir. 2003). Nevertheless, a court need not credit "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-1430 (3d Cir. 1997).

In considering whether the complaint survives a motion to dismiss, both the District Court and the Court of Appeals review whether it "contain[s] either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Twombly, ___ U.S. at ___, 127 S.Ct. at 1969, 167 L.Ed.2d at 945 (quoting Car Carriers, Inc. v. Ford Motor Company, 745 F.2d 1101, 1106 (7th Cir. 1984)(emphasis in original); Maspel v. State Farm

Mutual Auto Insurance Company, 2007 WL 2030272, at *1
(3d Cir. July 16, 2007).

Furthermore, the court must view a pro se litigant's civil rights complaint under a lenient standard. See Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 595-596, 30 L.Ed.2d 652, 653-654 (1972).

DISCUSSION

Federal Claims

Section 1981 provides a cause of action for intentional discrimination and states that all individuals "within the jurisdiction of the United States shall have the same right...to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property." 42 U.S.C. § 1981; see also Pryor v. National Collegiate Athletic Association, 288 F.3d 548, 562 (3d Cir. 2002).

Claims arising under § 1981 are subject to a statute of limitations of two years if the plaintiff's claim was actionable under the pre-1991 amendment to § 1981 or four years if the plaintiff's claim arose under the Act amending § 1981. See George v. American Baptist Churches USA, 2008 WL 2265281, at *2-3 (E.D.Pa. May 30, 2008)(DuBois, S.J.).

See also Jones v. R.R. Donnelley & Sons Company, 541 U.S. 369, 382, 124 S.Ct. 1836, 1845, 158 L.Ed.2d 645,

656-657 (2004), which holds that a cause of action arises under an Act of Congress enacted after December 1, 1990, and therefore is governed by § 1658's four-year statute of limitations, if the plaintiff's claim against the defendant was made possible by a post-1990 enactment. See also Goodman v. Lukens Steel Company, 482 U.S. 656, 662, 707 S.Ct. 2617, 2621, 96 L.Ed.2d 572, 582 (1987), which holds that the United States Court of Appeals for the Third Circuit was correct in applying Pennsylvania's two-year statute of limitations period for personal injury to § 1981 actions.

Section 1983 is an enabling statute which provides a remedy for the violation of constitutional or statutory rights. However, it does not create any substantive rights. Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000).

Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

Section 1985(3) prevents individuals from conspiring "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws,

or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3).

Sections 1983 and 1985(3) do not include a relevant statute of limitations. To ascertain the applicable statute of limitations for an action pursuant to § 1983 or § 1985, courts must rely on 42 U.S.C. § 1988, which requires the court to apply the statute of limitations for the state where it sits unless applying the state's statute of limitations would conflict with the United States Constitution or with federal law.

42 U.S.C. § 1988; Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000).

The United States Supreme Court has stated that for purposes of a civil rights action under § 1983 or § 1985, courts should apply the state statute of limitations applicable to personal injury actions. Wilson v. Garcia, 471 U.S. 261, 276-279, 105 S.Ct. 1938, 1947-1949, 85 L.Ed.2d 254, 267-269 (1985). Pennsylvania's statute of limitations period for personal injury actions is two years. 42 Pa.C.S.A. § 5524(7).

Section 1986 creates a cause of action against an individual who fails to prevent a wrongful act from being committed when the individual has knowledge of "the wrong conspired to be done." 42 U.S.C. § 1986. A claim brought under § 1986 is subject to the explicit limitations of the statute, which states that "no action under the provisions of this section

shall be sustained which is not commenced within one year after the cause of action has accrued." Id.

Under federal law, the statute of limitations begins to run from the time when the plaintiff knows or has reason to know of the injury. Gibson v. Superintendent of New Jersey Department of Law and Public Safety, 411 F.3d 427, 435 (3d Cir. 2005); Oshiver v. Levin, Fishbein, Sedran, & Berman, 38 F.3d 1380, 1386 (3d Cir. 1993).

Furthermore, the United States Supreme Court has held that the statute of limitations for a § 1983 claim seeking damages for false arrest and imprisonment in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run "at the time the claimant becomes detained pursuant to legal process", and the claimant is not barred from bringing a claim prior to the dismissal of his case. Wallace v. Kato, ___ U.S. ___, ___, 127 S.Ct. 1091, 1100, 166 L.Ed.2d 973, 986 (2007).

Additionally, the Third Circuit has recognized that the applicable statute of limitations may be extended under two doctrines, the discovery rule and equitable tolling. See Oshiver, 38 F.3d at 1386-1388. The discovery rule postpones the beginning of the statute of limitations period from the date when the alleged unlawful act occurred to the date when the plaintiff

actually discovered his injury. Id. at 1386; Lopez v. Brady, 2008 WL 2310943, at *4 (M.D.Pa. June 3, 2008).

Furthermore, the statute of limitations may be extended if equitable tolling is applicable. The Third Circuit has stated that equitable tolling is appropriate in three common situations: where "(1) the defendant has actively misled the plaintiff; (2) the plaintiff in some extraordinary way has been prevented from asserting his rights; or (3) the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." Miller v. Beneficial Management Corporation, 977 F.2d 834, 845 (3d Cir. 1992).

Plaintiff commenced the within action on December 13, 2006 in response to an arrest and beating that allegedly occurred on January 13, 1989. As a result of the arrest, plaintiff alleges that he was incarcerated between fifteen and thirty months prior to the dismissal of the criminal charges. However, the exact dates of his incarceration period were not included in plaintiff's complaint.

Moreover, plaintiff alleges that his charges were dismissed on July 13, 2005 as nolle prossed. In his complaint, plaintiff averred that defendants Street and Rendell deprived him of his rights, privileges, and immunities in violation of 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986 and deprived him of his guaranteed rights under the First, Fourth, Fifth, Sixth, Eighth,

and Fourteenth Amendments of the Constitution of the United States.

The statute of limitations for plaintiff's § 1981 claim began running on January 13, 1989 when the arrest and beating allegedly occurred because plaintiff should have been aware of any violations to his constitutional rights at that time. The allegations in plaintiff's complaint do not suggest whether his claim was made possible by the pre- or post-amendment section of § 1981.

If the claim were actionable under the pre-amendment section, then the two-year limitations period would be applicable. If the claim were actionable under the post-amendment section, then the four-year statute of limitations would be applicable. However, it is immaterial whether the two- or four-year statute of limitations would be applicable to plaintiff's § 1981 claim because the two-year limitations period expired on January 13, 1991 and the four-year limitations period expired on January 13, 1993. Under either period, plaintiff's December 13, 2006 commencement of this action was untimely.

Moreover, the limitations period for plaintiff's § 1983 claim asserting violations of the First, Fifth, Sixth, Eighth, and Fourteenth Amendments began on January 13, 1989, the date of these alleged events. Therefore, the two-year statute of limitations for the § 1983 claim expired on January 13, 1991,

making plaintiff's December 13, 2006 action untimely by nearly 16 years. Accordingly, plaintiff's § 1983 claim asserting violations of the First, Fifth, Sixth, Eighth, and Fourteenth Amendment is time-barred.

According to Wallace, supra, the statute of limitations for plaintiff's Fourth Amendment claim under § 1983 began running at the time Pennsylvania detained him for legal proceedings.

___ U.S. at ___, 127 S.Ct. at 1100, 166 L.Ed.2d at 986.

Specifically in Wallace, the limitations period began when the plaintiff appeared before the examining magistrate and was bound over for trial. ___ U.S. at ___, 127 S.Ct at 1097, 166 L.Ed.2d at 983.

Plaintiff avers that he was incarcerated for between fifteen and thirty months and that his criminal charges were dismissed on July 13, 2005. It is unclear from the complaint when plaintiff's legal proceedings occurred, whether on the day of his arrest on January 13, 1989 or at a later date. However, it may be assumed that he appeared before a magistrate at a date after his arrest and prior to his incarceration. See Wallace, ___ U.S. at ___, 127 S.Ct at 1097, 166 L.Ed.2d at 983. Thus, the two-year statute of limitations for plaintiff's Fourth Amendment claim under § 1983 would have expired significantly prior to December 13, 2006 (when plaintiff commenced this action by delivering his complaint to prison officials). Therefore,

plaintiff's § 1983 claim asserting a violation of the Fourth Amendment is untimely.

The limitations period for plaintiff's § 1985(3) action also began on January 13, 1989. As a result, the two-year statute of limitations for the § 1985(3) action expired on January 13, 1991, nearly 16 years before plaintiff allegedly filed his December 13, 2006 complaint. Therefore, plaintiff's § 1985(3) claim is time-barred.

Similarly, the statute of limitations for plaintiff's § 1986 action began running on January 13, 1989. The one-year limitations period for the § 1986 action expired on January 13, 1990. Accordingly, plaintiff's December 13, 2006 action was nearly 17 years late.

Additionally, under the circumstances in this case, plaintiff has no basis for tolling of the statute of limitations. Tolling is not appropriate under the discovery rule because plaintiff has not asserted that he faced delays in discovering his injury. Similarly, equitable tolling is inappropriate because there is no evidence that anyone has actively misled plaintiff or that extraordinary measures prevented plaintiff from asserting his claims.

Therefore, I grant defendants' motions to dismiss plaintiff's federal law claims.

State Claims

In this case, original jurisdiction was based on federal-question jurisdiction pursuant to 28 U.S.C. § 1331. Having determined that all federal-question claims must be dismissed, the remaining tort claims sound in state law.

When all federal claims have been dismissed in an action based on federal-question jurisdiction pursuant to 28 U.S.C. § 1331, I may decline to exercise supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367(c)(3). Growth Horizons, Inc. v. Delaware County, Pennsylvania, 983 F.2d 1277, 1284-1285 (3d Cir. 1993).

Therefore, I decline to exercise supplemental jurisdiction over the remaining claims. As a result, I dismiss plaintiff's Pennsylvania tort claims without prejudice to re-assert such claims in a proper state forum.² Because I have done so, I need not address defendants' claims that they are entitled to official immunity regarding plaintiff's state tort claims pursuant to the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §§ 8541-8564.

² Plaintiff asserts state tort claims of assault, battery, false arrest, false imprisonment, obstruction of justice, malicious prosecution, negligence, and gross negligence. It appears that plaintiff's claim for "obstruction of justice" is not recognized as a cognizable civil cause of action under either federal law or Pennsylvania state law. Bennett v. Maier, 1998 WL 386129, at *4 (E.D.Pa. July 7, 1998)(Kelly, Robert F., J.).

CONCLUSION

For all the foregoing reasons, I grant Defendant John Street's Motion to Dismiss and Defendant Edward Rendell's Motion to Dismiss, and dismiss plaintiff's Complaint against defendants John Street and Edward Rendell.

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

HAROLD CANNON,)	
)	Civil Action
Plaintiff)	No. 06-cv-5505
)	
vs.)	
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JACK BAIRD;)	
STEVE BROWN;)	
JOHN DOE;)	
EDWARD RENDELL; and)	
JOHN STREET,)	
)	
Defendants)	

O R D E R

NOW, this 26th day of September, 2008, upon consideration of Defendant John Street's Motion to Dismiss filed December 17, 2007; upon consideration of the Motion of Plaintiff Harold Cannon in Opposition of Defendant's John Street to Dismiss Complaint [*sic*], which opposition was filed January 7, 2008; upon

consideration of Defendant Edward Rendell's Motion to Dismiss³, filed April 16, 2008; upon consideration of the briefs of the parties; and for the reasons articulated in the accompanying Opinion,

IT IS ORDERED that Defendant John Street's Motion to Dismiss and Defendant Edward Rendell's Motion to Dismiss are each granted.

IT IS FURTHER ORDERED that all federal claims against defendants Street and Rendell pursuant to 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986 are dismissed from plaintiff's complaint.

IT IS FURTHER ORDERED that all state tort claims against defendants Street and Rendell are dismissed from plaintiff's complaint without prejudice to re-assert such claims in a proper state forum.

IT IS FURTHER ORDERED that defendants John Street and Edward Rendell are each dismissed as parties to this action, and the Clerk of Court shall mark the docket accordingly.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

³ Defendant Edward Rendell's Motion to Dismiss completely incorporates the legal arguments of Defendant John Street's Motion to Dismiss. Although defendant Rendell's motion is unopposed, I reach my conclusion on the merits collectively with defendant Street's motion because the legal arguments are identical.