

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

WILLIAM BRANDON CUMMINGS : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, *et al.* : NO. 09-cv-0319-JF

MEMORANDUM

Fullam, Sr. J.

January 20, 2011

Plaintiff has filed a *pro-se* § 1983 action against Defendants City of Philadelphia and the City of Philadelphia Police Department based on alleged violations of Plaintiff's constitutional rights during a traffic stop that took place in June 2005. The City has filed a motion to dismiss, arguing that Plaintiff's suit is time-barred. I agree.

In Pennsylvania, the statute of limitations for a § 1983 action is two years. Plaintiff did not file suit until January 22, 2009. (An error in processing Plaintiff's renewed in forma pauperis application delayed service on the City until 2010, but the action was untimely when initiated by Plaintiff.)

Plaintiff's arguments that the discovery rule or doctrine of equitable tolling should apply in this case are unavailing. There is no question that Plaintiff knew of the basis for his claim at the time of the traffic stop in June 2005 so the discovery rule does not apply. Equitable tolling of the statute of limitations is inappropriate in this case, as Plaintiff argues

only that he was afraid to file suit, not that the police misled him regarding the existence of a cause of action or actively prevented him from filing suit. Plaintiff also fails to plead facts showing that he was diligent in preserving his claim.

An order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

